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**IMMUNITIES AND PRIVILEGES
OF
INTERNATIONAL OFFICIALS**

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FOREWORD

The present volume, the eighth in the series of Studies in the Administration of International Law and Organization, is devoted to the immunities and privileges of international officials, with specific emphasis on the experience of the League of Nations, whose officials enjoyed very broad immunities and privileges under the Covenant. Written at the end of the League's active existence by a man who had been associated with the League administration for almost twenty years, the present monograph covers the whole experience from the beginning up to the moment of the League's liquidation. The value of the study is enhanced by a final chapter which deals with the bases of the post-war regime relating to international officials, thus bringing the development up to date and showing the modifications in arrangements and concepts which have taken place since 1920.

The permanent value of this volume is furthermore increased by a number of annexes, consisting of selected documents concerning the immunities and privileges of the League's officials and of United Nations officials. In the past it has proved almost impossible for the student and international lawyer to study the basic documents on which the arrangements made by the League with the Swiss and other authorities were founded. Mr. Hill's volume for the first time provides full documentation, including some texts that have not hitherto been made public.

GEORGE A. FINCH

Director of the Division of International Law

WASHINGTON, D. C.

November 15, 1946

PREFACE

This study — without the last chapter and a number of annexes which are now added for purposes of comparison and reference — was first issued by the Carnegie Endowment in mimeographed form in the spring of 1945, and was made available to members of the committee of the San Francisco Conference dealing with legal problems. In preparing the text for publication I have made a number of additions and minor changes in the original chapters, more particularly in the light of material to which I have since had access in Geneva; but on no major point of substance or interpretation has the original been modified.

I have dealt mainly with the experience of the League organizations in the pre-war years. Except in the last three chapters, such references as are made to developments after 1939 are largely incidental. It must, however, be emphasized that the agreements with Switzerland remained in force throughout the war and that although the League is now in process of liquidation, these agreements and the obligations of member states under Article 7, paragraph 4, of the Covenant, will lapse only when the liquidation has been completed. For this reason, the regimes applicable to League officials are described in the present tense. On the other hand, since the Permanent Court of International Justice, after a brief resumption of its activities in 1945, has now been formally dissolved, the past tense is used in the case of the special arrangements between the Court and the Netherlands Government. It may be observed that these arrangements are being provisionally applied in favor of the newly constituted International Court of Justice.

The position of the President and the Registrar of the Permanent Court after the German invasion in 1940 has been described as follows by Judge Manley O. Hudson: ¹

After the invasion of The Netherlands of May 10 the seat of the Court at The Hague became all but inaccessible. The President and the Registrar of the Court continued to function at The Hague even after May 10, however, and they continued to enjoy the diplomatic privileges which had previously been accorded by the Netherlands authorities. Informed that these privileges would not be accorded after the departure of the diplomatic missions from The Hague on July 16, the President and Registrar left The Hague about that date; accompanied by some of the members of the staff of the Registry of other than Netherlands nationality, they established themselves provisionally in Switzerland.

Until their departure, all members of the Registry staff not of Netherlands nationality in fact continued to enjoy immunities; and, for the purpose of the journey to Switzerland, special travel facilities were accorded.

I have received help and advice in preparing this study from a large number of colleagues and former colleagues, some of whom, unlike myself, have for years been directly concerned with the day-to-day problems of the application of Article 7, paragraph 4, of the League Covenant. Special acknowledgment is due to Mr. Joseph Nisot, formerly of the Legal Section of the Secretariat, who was good enough to revise parts of the manuscript, as well as to Mr. Hugh McKinnon Wood, former Legal Adviser to the Secretariat, Mr. C. Wilfred Jenks, Legal Adviser of the International Labor Office, and Judge Manley O. Hudson, formerly a member of the Permanent Court of International Justice, from all of whom I have had valuable suggestions and criticisms. I am furthermore greatly indebted to Dr. Walter Schiffer of the Institute for Advanced Study, Princeton, New Jersey, and formerly of the Geneva Research

¹ Manley O. Hudson, "The Nineteenth Year of the Permanent Court of International Justice," *American Journal of International Law*, Vol. 35 (1941), p. 1.

Center, for assistance in collecting and analyzing the relevant material.

It is perhaps unnecessary to add that the views expressed on the working of the pre-war regimes and the desiderata for the regimes of the future do not necessarily correspond with those held by the authorities of the various international organizations concerned.

M. H.

GENEVA, *April, 1946*

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**IMMUNITIES AND PRIVILEGES
OF
INTERNATIONAL OFFICIALS**

CHAPTER I

INTRODUCTION

1. *Article 7, paragraph 4, of the League Covenant*

The juridical basis of the diplomatic privileges and immunities of League officials is to be found in paragraph 4 of Article 7 of the Covenant of the League of Nations, which reads as follows:

Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.¹

A clause on this subject first appeared in the British Draft Convention submitted to the Peace Conference on January 20, 1919, Article 12 of which provided that —

Representatives of the States Members of the League attending meetings of the League, the representatives of the High Contracting Parties at the capital of the League, the Chancellor and the members of the permanent secretariat of the League, and the members of any judicial or administrative organ or of any commission of enquiry working under the sanction of the League shall enjoy diplomatic privileges and immunities while they are engaged in the business of the League.²

The provision had to all intents and purposes assumed its final form in the Draft Convention laid before the Commission on the League of Nations at its first meeting on February 3, 1919 (the Hurst-Miller Draft), and was adopted by the Commission without change two days later.³ There are no grounds

¹ "Les Représentants des Membres de la Société et ses agents jouissent dans l'exercice de leurs fonctions des privilèges et immunités diplomatiques."

² David Hunter Miller, *The Drafting of the Covenant* (New York, London: J. P. Putnam Sons, 1928), Vol. II, pp. 108-9.

³ *Ibid.*, p. 233: "Representatives of the High Contracting Parties and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities."

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for believing that the modification of the original British draft was due to any difference of opinion as regards the scope of the provisions which it contained.

The reasons for the insertion in the British draft of the clause granting diplomatic prerogatives to League officials have not been recorded and there was apparently no discussion of this provision — which might have shed some light on those reasons — in the Commission on the League of Nations. At that time there was no established practice concerning international officials to refer to nor had there existed an international organization at all comparable to the projected League of Nations. Very extensive prerogatives had indeed been granted to the staff of the European Danube Commission — an institution which had been functioning since 1856.⁴ But this scarcely provided a useful precedent for the League, whose scope, character, and functions were very different.

But the broad reasons for granting such prerogatives to League officials are not difficult to surmise. The League of Nations was intended to play a central part in the whole realm of international relationships. If it were to be in a position to fulfil this purpose, it was clear, first, that its officials ought to be free to perform their functions without interference or pressure from any national government;⁵ and, secondly, that those officials should be enabled to deal with the agents of national governments on a footing of equality. Ideas about the character and the size of the organization that would develop under the League were still somewhat vague, but the picture that

⁴ Francis Rey, "Les immunités des fonctionnaires internationaux," *Revue de droit international privé*, Vol. XXIII (1928), p. 265.

⁵ Cf. Sir Cecil J. B. Hurst, "Diplomatic Immunities — Modern Developments," *The British Year Book of International Law*, 1929, p. 9: "The phrase (diplomatic immunities) is adequate to express the real purpose, which is that the individuals who by Article 7 are to enjoy these diplomatic immunities are thereby to be placed, when engaged on the business of the League, in a position of non-subjection to the local jurisdiction.

"Such records as have been published show that no particular attention was directed to the operation of this provision of the Covenant. It was proposed and accepted as a right and proper principle which should apply. . . ."

seems to have suggested itself, at any rate to the British drafters,⁶ was that of a body exercising quasi-diplomatic functions, whose members would unquestionably be entitled to, and would require for the efficient discharge of their duties, no less dignity and consideration than were enjoyed by ordinary diplomats.

*2. Article 19 of the Statute of the Permanent Court of
International Justice*

Similarly, as regards the judges of the Permanent Court of International Justice, the essential consideration was undoubtedly to insure to them the independence necessary for the performance of their functions. But another factor was not overlooked. Article 19 of the draft Statutes of the Court presented to the Council in July, 1920, by the Advisory Committee of Jurists read as follows:

The members of the Court, when outside their own country, shall enjoy the privileges and immunities of diplomatic representatives.

Commenting on this clause, the Advisory Committee stated that "The grant of these privileges will increase the prestige due to their (the members') great personal merits."⁷ Throughout the negotiations concerning the application of Article 19

⁶ Cf. the following passages from the notes to the British Draft Convention of January 20, 1919 (Miller, *op. cit.*, Vol. II, p. 115): "It might be well to agree in a protocol that the Council shall, in the first instance, direct the Chancellor to select the Secretariat in a particular way. Such a protocol, signed by the States composing the Council, might stipulate that the Chancellor shall appoint ten permanent secretaries at his discretion, subject to the following provisions:

"He shall choose one national of each of the States members of the Council, two nationals of two European States not members of the Council, one national of one of the States of America other than the United States, and two nationals of any States members of the League at his discretion. Before appointing a national of any State, the Chancellor ought, however, to secure the approval of the Government of such State, and the Council should have the right to veto any given appointment by unanimous vote."

⁷ In the French text, "En rehaussant, par une assimilation des plus honorables, le prestige inhérent à leur haute valeur personnelle. . . ." League of Nations, *The Records of the First Assembly, Meetings of the Committees* (Geneva, 1920), Vol. I, p. 440.

in the Netherlands, the question of the rank to be accorded to the judges of the Court *vis-à-vis* the diplomatic corps⁸ played a prominent rôle.

In the case of the judges, there was also a precedent. The Hague Conventions had provided that the members of the Permanent Court of Arbitration should enjoy diplomatic privileges and immunities in the exercise of their duties and out of their own country. The Advisory Committee of Jurists which prepared the Statute of the Permanent Court of International Justice rejected a proposal to the effect that the judges of the Court should enjoy diplomatic privileges only during the actual performance of their duties and agreed that they should be granted these privileges under the same conditions as diplomats. They should, for instance, enjoy these rights not only during their residence in the Netherlands, but also in the countries through which they would have to travel on their way to and from their duties.⁹

In conformity with the corresponding clauses of the Hague Conventions, the Advisory Committee wished to grant the judges diplomatic prerogatives only "when outside their own country." This limitation gave rise to an important divergence of opinion in the subcommittee of the Third Committee of the Assembly in 1920. A British amendment was introduced to eliminate from the Advisory Committee's draft the words "when outside their own country." The statement of Sir Cecil Hurst, the British representative, is recorded as follows:

The British Government did not think it reasonable that a judge belonging to the country in which the Court had its seat should not enjoy diplomatic privileges. He observed that the same question arose concerning the permanent Secretariat of the League, and

⁸ See Chapter II, below.

⁹ Permanent Court of International Justice, Advisory Committee of Jurists, *Procès-verbaux of the Proceedings of the Committee, June 16th - July 24th, 1920, with Annexes* (The Hague: Van Langenhuyzen Brothers, 1920), p. 479.

expressed the opinion that the time had come to abandon the old diplomatic rule, according to which a person enjoys diplomatic privileges only outside his own country.¹⁰

This British amendment was opposed by M. Max Huber, representative of Switzerland, who argued as follows:

The extension of diplomatic privileges would lead to inadmissible results which the Swiss Government were not prepared to accept as concerns the permanent Secretariat. Persons enjoying, for instance, the right of voting in Switzerland could not be exempted from the application not merely of criminal legislation, but also of rules concerning taxes and military service. Steps would, of course, be taken to protect their professional secrets, but a clear distinction must be drawn between their official situation as officers of the League, and their personal legal status.¹¹

The Netherlands representative, M. Loder, said that "M. Huber's statement was in close correspondence with the results attained at The Hague."

The outcome of the debate was the elimination of the proviso to which the British representative had objected and the adoption of a text corresponding to that of the Covenant, namely:

The Members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

¹⁰ First Assembly, *Meetings of the Committees, op. cit.*, Vol. I, p. 356. Writing many years later, Sir Cecil Hurst elaborated these views. His article, referred to above, in the *British Year Book of International Law*, 1929, contains the following passage (p. 10):

"Is there any implied limitation on the operation of Article 7 which restricts it to officials of the League of foreign nationality?"

"On principle the answer should certainly be 'No'. The primary function of the League is the maintenance of peace. Even when it is engaged on work of international co-operation or on work of a humanitarian kind, it is with a view to improving the relations between states and with the ultimate purpose of encouraging peace by the elimination of the causes of war. Its officials must, therefore, be in a position to hold the balance even between the different states concerned in any particular matter which they are handling, even though one of those states is that of which the individual official concerned is a national. To do this they should not be dependent on or subject to the local jurisdiction."

¹¹ First Assembly, *Meetings of the Committees, op. cit.*, Vol. I, pp. 356-57.

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On this text, the drafting subcommittee commented as follows:

The Sub-Committee has given this Article a wording corresponding to that of Article 7 of the Covenant, where the question of the immunities of officials of the League of Nations is dealt with.

The Sub-Committee was of opinion that the question of the situation of judges in their own countries should not be prejudiced by the solution adopted.¹²

It is of interest to note that the Chairman of that subcommittee, in his original draft, had written:

La Sous-Commission est pourtant unanime à reconnaître que, dans leurs propres pays, l'immunité de ces personnes doit être bornée à ce qu'ils aient droit à l'inviolabilité de leur correspondance officielle et qu'ils ne puissent, dans aucun cas, être recherchés pour des actes relatifs à l'exercice de leurs fonctions.¹³

3. *Difference between International Officials and Diplomatic Agents*

Underlying the discussion just referred to there was a general consideration of great importance which it may be well to formulate at this stage.

There is an essential difference between the purpose served by diplomatic privileges and immunities in the case of ordinary diplomatic agents¹⁴ and in that of international officials. In the first instance, the privileges and immunities are granted in the interest of a state, whose agents are thereby intended to be placed in a position allowing them to perform their legitimate duties without any possibility of interference on the part of the foreign government to which they are accredited. It follows that those who enjoy such prerogatives are not entitled to claim them against the state on behalf of which they are granted. Owing to the fact that states nearly always choose their diplomatic representatives from among

¹² First Assembly, *Meetings of the Committees*, *op. cit.*, Vol. I. p. 529.

¹³ Exists in French text only. *Ibid.*, p. 605.

their own nationals, the conclusion has been drawn by many states that their nationals may in no case claim diplomatic immunities against themselves.

But international officials do not act in the name of any particular state. They act exclusively in the higher interest of the community of states constituting the organization in whose service they are. They are not accredited to a particular country but may be required to work in many countries, including their own. To quote the first Secretary-General of the League:

In theory, at any rate, an official might find diplomatic privileges and immunities particularly necessary as far as his own Government was concerned.^{14, 15}

4. *Persons to Whom the Immunities and Privileges Apply*

Apart from the question of the position of officials in their own countries (which as shown in a later chapter assumed

¹⁴ From a letter to the Head of the Federal Political Department of Switzerland, June 11, 1925 (L. N. document C.66.1925.).

¹⁵ The author is indebted to M. Joseph Nisot for the following comment:

Article 7, paragraph 4, of the Covenant, expressly stipulating that League officials shall enjoy diplomatic privileges and immunities, provides for no exception. Even assuming the existence of a general rule of international law allowing States to withhold diplomatic immunities as regards their nationals, this rule should not be invoked by a Member of the League with respect to League officials. (This is the sense of Article 2 of the Resolutions adopted in 1924 by the Institut de Droit International relating to the interpretation of Article 7, paragraph 4, of the Covenant [31 *Annuaire de l'Institut* (1924), p. 179]). Interpretation of Article 7 in the light of such a rule would lead to the conclusion that the more nationals a Member State counts among the League officials, the less is the scope of its obligation, a conclusion clearly inconsistent with the very aims of the article. The question is left open whether, though recognizing to all League officials irrespective of nationality such diplomatic immunities and privileges as ensure their complete liberty of action and independence as officials, especially *vis-à-vis* itself (these should comprise as a minimum: (a) immunity from legal process with respect to acts accomplished in performance of their League duties, and (b) fiscal exemption with respect to their League salaries), a Member of the League may not reserve fuller diplomatic status for non-nationals.

See also Jacques Secrétan, "The Independence Granted to Agents of the International Community in Their Relations with National Public Authorities," *British Year Book of International Law*, 1935, pp. 64-75.

considerable practical importance), there were two principal questions which Article 7, paragraph 4, left open to interpretation. The first concerned the categories of persons to be considered as "League officials."

No difficulty has arisen in regard to the recognition of the status of "League officials" with respect to officials of the International Labor Office¹⁶ or to those of the Registry of the Permanent Court of International Justice.¹⁷ But the matter has not been so simple in regard to other persons working for the League not as government representatives. The problem has concerned members of the great majority of permanent and temporary commissions and committees and other agencies set up by the League.

There never has been any doubt that the term "Officials of the League of Nations" in Article 7 of the Covenant comprises more than the staff of the central organizations in Geneva and it is therefore in the broader sense, comprising all League agents and not only the persons employed in the Secretariat and the International Labor Office, that the term is used in this study. It must be borne in mind, however, that two groups are thereby combined which differ greatly from one another. The staffs of the Secretariat and the International Labor Office form a coherent organization and it is relatively easy to define their status and privileges in general terms. Where a distinction has to be made between the prerogatives enjoyed by different categories of the staff, the place of the individual

¹⁶ This subject, however, was debated at the 1924 session of the Institute of International Law. *Annuaire de l'Institut de Droit International*, Vol. 31 (1924), p. 19.

¹⁷ In the first *Annual Report of the Permanent Court of International Justice* (January 1st, 1922-June 15th, 1925), Publications of the Court, Series E, No. 1, p. 103, it is stated that: "As regards officials of the Registry, their status is established by Article 7 of the Covenant of the League of Nations. . . ." Article II of the "General Principles" contained in the 1928 agreement between the Court and the Netherlands Government reads: "In view of Article 7, paragraph 4, of the Covenant of the League of Nations, the higher officials of the Court will be accorded, in principle, as regards diplomatic immunities and privileges, the same status as diplomatic officials attached to the Legations at The Hague."

official in the service hierarchy permits of an easy classification as to diplomatic status. The other group, however, is composed of persons whose functions vary widely as to their nature, the places where they are performed, and their duration; above all, it is a group very difficult to delimit.

The practical arrangements made in certain of these cases will be mentioned in later chapters. Here it need only be said that it was made reasonably clear in the earliest days of the League that the mere fact that a person was appointed to some function by the Council or other League organ under a special treaty did not necessarily imply that he was to be considered as a League official.¹⁸

5. Scope of the Immunities and Privileges of Different Categories of League Officials

The second question left open to interpretation by Article 7, paragraph 4, relates to the scope of the immunities and privileges of various categories of League officials.

Whether all officials enjoy the same privileges has been a question of especial importance in the case of the Secretariat and the International Labor Organization. The Covenant makes no distinction between officials of different status, but it was evident from the outset that the full prerogatives appropriate in the case of the Secretary-General and other high officials could not be extended to the humblest clerk. It will be seen in the following chapters how this problem was solved in practice.

The words "when engaged on the business of the League" at the end of Article 7, paragraph 4, might have been interpreted to mean that officials enjoy diplomatic prerogatives only at the time when they are actually performing their official duties. In practice, however, the problem was solved in conformity with the view taken by the Advisory Committee

¹⁸ See below, Chapter V, p. 69.

CHAPTER II

ORIGINS OF THE AGREEMENTS WITH SWITZERLAND AND THE NETHERLANDS

The League of Nations Secretariat was assembled in London between June, 1919, and October, 1920, when it moved to Geneva. The staff of the International Labor Office (which, after a nucleus had been formed in Paris, had likewise made its temporary headquarters in London) was transferred to Geneva a few months earlier.

1. *The "Modus Vivendi" of 1921 with Switzerland*

No agreement regarding the scope of the privileges and immunities to be granted to League officials was considered necessary in London — though the British authorities set a precedent in exempting from income tax the League salary of all officials, including those of British nationality.¹ A comprehensive agreement on the subject, however, was clearly required in Switzerland where the permanent seat of the League was to be. This was also the view of the Swiss Federal Council, which as early as August, 1919, had drawn the attention of the Federal Assembly to the importance of the question,² observing that "if . . . the League of Nations develops, if the number of its officials multiplies and if its services come to occupy extensive property, it will be necessary to work out a general settlement of these relationships between the League and the local federal and cantonal authorities by contractual means. . . ."

¹ League of Nations, *The Records of the First Assembly, Meetings of the Committees*, Vol. II, p. 12. The exemption meant that the League salary was deductible from total income declared for tax purposes and any income from other sources was accordingly taxed as though it were the only income of the official.

² *Message du Conseil Fédéral à l'Assemblée Fédérale concernant la Question de l'Accession de la Suisse à la Société des Nations (du 4 Août, 1919)*.

Shortly after the arrival of the Secretariat in Switzerland, the Secretary-General, Sir Eric Drummond (now Lord Perth), acting on behalf not only of the Secretariat but also of the International Labor Office, entered into negotiations with the Federal Political Department. These negotiations led to agreement on a number of important points which were embodied in a letter of July 19, 1921, from M. Giuseppe Motta, Head of the Department, to the Secretary-General and were accepted by both parties as constituting the basis for an "initial and provisional" *Modus Vivendi* for the League of Nations at Geneva.³

In its *Message* of August, 1919, the Federal Council had written: "It is natural that the League of Nations should enjoy the same privileges and the same immunities as any state with which we entertain diplomatic relations."⁴ In line with this attitude, the essential principle of the 1921 Agreement was to assimilate the non-Swiss officials of the Secretariat and the International Labor Office to the personnel of the diplomatic missions at Berne and to grant them the corresponding prerogatives. In accordance with the practice followed at Berne,⁵ which restricts the enjoyment of full diplomatic prerogatives to a smaller group of officials than

³ There is no official English version of this document. The original French text and an unofficial translation are reproduced in Annex I, below.

The exchange of correspondence preceding the conclusion of the agreement and the Secretary-General's circular No. 316 of October 28, 1922, on "the rights conferred and the obligations imposed" on the League staff in virtue of the agreement are given in L.N. document C.66.1926.V., which is reproduced as Appendix 1 to Annexes I and II, below.

The regime was further elaborated in a pamphlet issued in 1922 by the Geneva Cantonal authorities (Département de Justice et Police de la République et Canton de Genève) under the title *Aperçu du régime provisoire applicable à la Société des Nations et à son personnel résident à Genève*.

⁴ *Loc. cit.*, p. 51.

⁵ The division of the staff into two categories was decided upon (according to Charles Morton, *Les privilèges et immunités diplomatiques; Etude théorique suivie d'un bref exposé des usages de la Suisse dans ce domaine* [Lausanne: Imprimerie La Concorde, 1927], p. 162) after the Federal Political Department had taken note of a decree of the Council of State of the Canton of Berne, dated December 21, 1920, relating to the personnel of diplomatic missions at Berne.

in many other capitals, League officials⁶ were divided into two categories. The first covered what were known as "extra-territorial officials," assimilated to the diplomatic corps and heads of chanceries at Berne. These were officials who "by their rank and their functions" corresponded to "public officials." The second covered the so-called non-extrateritorial officials, persons who "without being assimilable to public officials, are nevertheless employed and paid by the League of Nations and are in the exclusive service of its Secretariat or of the International Labour Office." The interpretation of this distinction has never given rise to difficulty, since it was arranged that the Secretary-General and the Director of the International Labor Office should themselves draw up and communicate regularly to Berne the lists of officials falling within each category. In the first category were placed all members of the higher administrative and research staff; in the second, the lower administrative staff, the clerical and stenographic staff, as well as the higher service personnel.

Special privileges and immunities were granted to the highest officials (the Secretary-General, the Deputy and Under Secretaries-General, and the Directors in the Secretariat; the Director, Deputy and Assistant Directors, and Chiefs of Division in the International Labor Office), who were assimilated in principle to the heads of diplomatic missions at Berne.

2. *Tax Exemption of the Salaries of Swiss Officials*

The *Modus Vivendi* of 1921 was a provisional and partial arrangement subject at any time to revision at the request of one of the parties. The position of members of the staff of Swiss nationality was expressly reserved for future settle-

⁶ That is, members of the League staff proper, excluding "auxiliary staff" or "employees" — cleaners, gardeners, workmen, etc. The auxiliary staff was almost exclusively of Swiss nationality.

ment; but it was provided that such officials should enjoy certain privileges in the meantime, including exemption, so far as their League salaries were concerned, from the Geneva cantonal tax on earned income.

This privilege was, however, revoked by the Geneva Cantonal Taxation Law of March 24, 1923. When tax payments by Swiss officials under this law were about to fall due in 1925, representations on the subject were made by the Secretary-General to the Federal authorities. The negotiations that followed having failed, the matter was brought before the League Council in March, 1926. It remained on the agenda of the Council until the September session when the new *modus vivendi*, which confirmed the exemption of Swiss officials' salaries from cantonal and municipal direct taxes, was presented and approved.

The statement of M. Huber in the 1920 Assembly, to which reference has been made in Chapter I, foreshadowed the attitude on the subject of the treatment of Swiss officials taken by the Swiss authorities in the course of the negotiations leading to the 1921 and the 1926 agreements. The Swiss negotiators were able to argue that, according to the practice at Berne, which was the basis of the arrangements contemplated, diplomatic prerogatives were never granted to agents of Swiss nationality. In their opinion, this was in conformity with international law, which does not oblige any state to grant diplomatic privileges to its own nationals.⁷

But the arguments used by the two parties in the negotiations also raised some more general problems of interpretation of Article 7, paragraph 4. From the beginning, the Swiss authorities held that tax exemption of diplomatic agents was not

⁷ See Appendix 2(a) to Annexes I and II, below. The League case was set forth in the document reproduced as Appendix 2(b).

Cf. also Swiss reply to the Questionnaire of the Committee of Experts for the Progressive Codification of International Law in L.N. document C.196.M.70. 1927.V., p. 247: "The Federal Council never grants diplomatic privileges or immunities to Swiss nationals."

a right to be claimed on behalf of the agent, but was granted merely out of courtesy by the state to which he was accredited. As appears from the Swiss reply to the Questionnaire of the Committee of Experts for the Progressive Codification of International Law,⁸ this opinion was based on the idea that in diplomatic practice only those prerogatives warranted by the functions of the officials were to be granted on legal grounds and that fiscal exemption did not belong to this category. The conclusion drawn from these premises was that Article 7, paragraph 4, of the Covenant referring to common diplomatic usage, did not create a legal obligation on member states to grant tax exemption to officials of the League.⁹

It appears from the foregoing that the case of the Swiss negotiators was based on the idea of a complete assimilation of the status of League officials to that of ordinary diplomatic agents. The Secretary-General maintained that, according to the modern practice of international law, diplomatic agents were not excluded from the benefit of prerogatives in their own country. He laid emphasis, however, on considerations of another order, more particularly the special situation in which the League found itself with regard to the tax exemption of its officials — a situation quite different from that of an ordinary diplomatic mission. If states were to tax the salaries of their citizens who were League officials, he argued, it would be tantamount to their obtaining a refund of part of their contribution to the League. This point was of considerable practical importance in the case of Switzerland. The official languages of the League being English and French, the League institutions necessarily recruited a large proportion of their staff from English and French-speaking countries. Their practice, moreover, was to recruit subordinate staff locally.

⁸ *Report, op. cit.*, pp. 242, 246.

⁹ See Report of the Conversations which took place at the Secretariat of the League of Nations, December, 1925, quoted in Appendix I to Annexes I and II, below.

Hence, states which were favored by one or other of these considerations — and Switzerland was favored by both — possessed in the League services a number of officials far in excess of those of other members of the League. If such states were to tax their citizens who were League officials, it might indeed lead to an increase in the League budget, since compensation might have to be granted to the officials taxed if inequalities as between officials of different nationalities were to be avoided.¹⁰

This argument, it is interesting to note, leads to the conclusion that the principle of assimilating the officials of an international institution to diplomatic agents has definite limits, beyond which it ceases to be compatible with the aims of that institution.

3. The “*Modus Vivendi*” of 1926

Besides settling the question of the tax exemption of Swiss officials, the 1926 Agreement “summarized and completed” the arrangement of 1921 and, unlike its predecessor, it was submitted to the League Council for approval and published in the *Official Journal*.¹¹ It was said not to represent an interpretation of Article 7, paragraph 4, of the Covenant. To quote the report adopted by the Council on September 20, 1926: “Avoiding all discussion on the legal interpretation of Article 7, paragraph 4, of the Covenant, the Agreement contains practical rules on all of which the Swiss Federal Government, the Secretary-General of the League of Nations and the Director of the International Labour Office have declared their agreement.”¹²

¹⁰ See letter from the Legal Adviser of the Secretariat to the Head of the Division for Foreign Affairs of the Federal Political Department. See Appendix I to Annexes I and II, below.

¹¹ The official translation is reproduced in Annex II, below.

¹² Cf. also the reply of the Swiss Government in 1927 to the Questionnaire of the Committee of Experts for the Progressive Codification of International Law (*Report, op. cit.*, p. 248): “Although not in principle opposed to the conclusion

The contractual nature and therefore binding character of the *Modus Vivendi* of 1926 clearly appears from its Article 14, which reads in part as follows:

The above rules of the *Modus Vivendi* can only be modified by agreement between the Organisations of the League of Nations and the Political Department.¹³ If, however, an agreement cannot be reached, it shall always be open to the Federal Government or the Organisations of the League of Nations to denounce the whole or part of the rules of the *Modus Vivendi*. In this case the rules mentioned in the denouncement shall remain in force for one year from the date of such denouncement.¹⁴

On those points which were not covered in the document, the original arrangement of 1921 continued to apply. The regime resulting from the two *modi vivendi* is analyzed in the next chapter.

4. *Persons Covered by the Two Agreements*

The terms of the two arrangements with the Swiss authorities refer only to the staff at Geneva and thus do not cover important categories of persons who exercise functions within the League organization and, in peacetime, came to Geneva whenever their presence was required. The omission of any ruling on this subject from the 1926 *Modus Vivendi* led certain members of the Governing Body of the International Labor Office (employers' and workers' representatives, it being assumed that the 'status of government representatives was defined by Article 7, paragraph 4, of the Covenant) to ask that their position in this regard should be made clear.¹⁵

of fresh agreements" it "would be very glad to know what privileges may, in the Committee's opinion, be claimed by the parties in question on the basis of the present conventional situation. The essential point is the interpretation to be placed upon Article 7 of the Covenant."

¹³ Such an amendment was introduced in 1928 (see Annex II, below).

¹⁴ Translated from the French.

¹⁵ International Labour Conference, Tenth Session, 1927, Vol. II. *Report of the Director Presented to the Conference* (Geneva, 1927), p. 31, paragraph 45.

No official ruling on this whole question was made but it has been the practice of the Swiss authorities to assimilate such persons as closely as possible to government representatives or members of one or other of the Secretariat categories in accordance with the conditions of each case. No practical difficulty appears to have arisen in this connection.¹⁶

The same is true for two other classes of persons employed by the League institutions whose status was apparently not covered by the *Modus Vivendi*. The first of these comprises officials appointed for very short periods — for example, the “temporary collaborators” normally appointed for a few months only, and the additional staff of interpreters, etc., engaged for the duration of sessions of the League Assembly or the International Labor Conference. To the second class belong persons, such as the consultant physicians of the Secretariat and the International Labor Office, who worked only part time for the League for longer or shorter periods. It may be assumed that persons of either category would not be prevented from performing their official duties by acts of the Swiss authorities.

5. *The Agreement of 1928 with the Netherlands*

The Permanent Court of International Justice began to function at the beginning of 1922. Effect was given by the Netherlands Government to Article 19 of the Statutes of the Court (in the case of the judges) and Article 7, paragraph 4, of the Covenant (in the case of the small staff of the Registry, which numbered about twenty persons) in a series of regulations. These were the subject of communications from the Netherlands Ministry of Foreign Affairs to the authorities of

¹⁶ There may have been some doubt, however, as to whether certain bodies connected with the League were covered by the *Modus Vivendi*. See Chapter V, below, footnote 18 dealing with members of the Permanent Central Opium Board and the Drug Supervisory Body.

The position of Members of the Governing Body of the International Labor Office has been defined in the 1946 Agreement. See Chapter XI, p. 118, below.

the Court between April, 1922, and 1927. Until 1928 the diplomatic prerogatives of judges and officials of the Court were based on these unilateral regulations and not on any arrangement between the Netherlands authorities and the Court on the lines of the successive arrangements arrived at in Switzerland.

As we shall have occasion to show below, there were only two or three points that were not satisfactorily settled under this regime. The reasons leading to the negotiation, in 1928, of a formal agreement between the Court and the Netherlands authorities were not these questions relating to privileges and immunities but rather the question of precedence — the rank to be accorded to the judges of the Court *vis-à-vis* the diplomatic corps at The Hague. The question had indeed as early as 1922 been referred by the Court to the League Council which had not been disposed to view the matter very seriously¹⁷ and had requested the Court to negotiate directly with the Netherlands Government. But “no agreement,” wrote the Registrar to the Secretary-General on December 13, 1927, “was reached . . . which would have safeguarded the dignity of the Court and obviated certain difficulties of etiquette which are bound to arise in practice owing to the simultaneous presence at The Hague of members of the Court and the diplomatic corps accredited to the Netherlands Government.”

Representations made to the Netherlands Government by the President of the Court elicited a document indicating the views of that government regarding the Court's status. The rules proposed were found unacceptable by the Court “particularly on account of the tendency shown therein to treat the Court as if it were a Netherlands institution”;¹⁸ the whole question of the external status of the members of the Court

¹⁷ Manley O. Hudson, *The Permanent Court of International Justice, 1920-1942; A Treatise* (New York: The Macmillan Company, 1943), p. 326.

¹⁸ *Official Journal*, 1928, p. 980.

was thereupon resubmitted to the Council for consideration in March, 1928. At the Council's suggestion, negotiations between the Court and the Netherlands Government were resumed and these terminated in an agreement on some of the points at issue. The agreement thus established was duly recorded by the Council.¹⁹ It took the form of four "General Principles," supplemented by "Rules of Application." The rules previously laid down were not affected by the agreement and remained in force.²⁰

The regime at The Hague will be analyzed in Chapter IV. This chapter will be shorter than that dealing with the *Modus Vivendi* in Switzerland, owing mainly to the absence of any jurisprudence concerning the regime at The Hague, a fact easily explained by the very small number of persons concerned.

¹⁹ Reproduced in Annex III, below.

²⁰ Rules of Application, I, *ibid.*

CHAPTER III

ANALYSIS OF THE REGIME IN SWITZERLAND

The present chapter falls naturally into three parts, the first setting out some general considerations affecting the position of all officials, the second and third dealing with the regimes applied under the *Modus Vivendi* to officials not of Swiss nationality and to Swiss officials respectively. The position of first- and second-category officials not of Swiss nationality will be considered separately.¹

PART I. GENERAL CONSIDERATIONS

1. *The Importance of Waiver*

It is important to bear in mind that, through the enjoyment of the very extensive immunities from jurisdiction in Switzerland which are described below, League officials have not been placed above the law. Their immunities are subject to waiver by the Secretary-General or the Director of the International Labor Office and great importance has always been attached by both League and Swiss authorities to waiver being exercised freely whenever the interests of the League institution concerned would not be injured thereby.²

The following article appears in the Staff Regulations of the League Secretariat:

The diplomatic privileges and immunities attaching to officials of the League of Nations under Article 7 of the Covenant are conferred upon them in the interest of their duties. They furnish no excuse to the officials who enjoy them for non-performance of their private

¹ See pp. 15-16, above.

² Cf. the Circular of 1927 to members of the League Secretariat, dealing mainly with the use of waiver, which is reproduced as Appendix 3 to Annexes I and II, below.

obligations or failure to observe laws and police regulations. Officials of the Secretariat invoking these privileges and immunities must report to the Secretary-General, with whom it rests to decide whether they shall be waived.^{2a}

A similar article appears in the Staff Regulations of the International Labor Office, and the General Instructions relating to the Immunities of Members of the Office Staff contains the following clause:

It is evident that the Director can in no circumstances permit the exercise of the immunities for other than their legitimate purpose, and he will have no hesitation in waiving them in every case where they constitute an obstacle to justified demands that do not affect the interests of the International Labour Office. . . .³

A statement made by M. Albert Thomas in 1926 would seem to apply to the whole experience of the League institution in Geneva: "In practice, the immunities are waived whenever a legal decision seems called for and no abuse of the immunities is therefore possible."⁴ It may be observed that no official has ever been tried by a Swiss court for a criminal offense nor has waiver of immunities been requested in respect of such offense.

On the other hand, the waiving of immunities in civil cases, for the purpose of enabling claims arising out of the private life of officials and their families to be dealt with by the courts, has occurred quite frequently. The immunity is waived at the request of the Federal Political Department or of the official himself, but not at the request of the claimant or his legal representative.

The heads of the international organizations can waive an official's immunity without his consent; they can also refuse waiver even when the official concerned is willing to renounce his immunity. The reason for this will be readily understood

^{2a} Article 1, paragraph 3 (1933 edition).

³ General Instructions of March, 1936, Part I (2).

⁴ International Labour Conference, Eighth Session, 1926, Vol. II: *Report of the Director Presented to the Conference*, p. 50, paragraph 25.

if one bears in mind that the immunities have been instituted in the interests of the League itself, not in those of the officials who enjoy them.

But occasionally waiver has been refused in order to protect officials against injustice. For example, an official who was threatened with a suit for breaking a lease agreed to waive his immunity, subject to the Secretary-General's consent. That consent, however, was not forthcoming because it was the opinion of the Secretary-General's legal advisers that the suit was purely vexatious.⁵

It should be noted that the bringing of a suit by a first-category official before a Swiss court implies waiver of his immunities. Such officials are consequently unable to sue without the consent of their superiors. They may, however, call for the assistance of the police or lodge complaints with the police in case of necessity without obtaining this consent.

2. Influence of the League's Own Immunities on the Position of Its Officials ~

Paragraph 5 of Article 7 of the Covenant provides that "the buildings and other property occupied by the League . . . shall be inviolable." The *Modus Vivendi* of 1926 stipulates that the League of Nations cannot be sued without its consent; that its premises and archives are inviolable; that no agent of the public authority may enter the said premises in the exercise of his duties; that the League enjoys complete fiscal and customs exemption.

This far-reaching immunity conferred upon the League itself provides a certain protection for its officials,⁶ regardless of whether they themselves enjoy diplomatic immunity. Thus

⁵ Case cited by the late Dr. Å. Hammarskjöld, Registrar of the Permanent Court of International Justice, in *Académie de Droit International, Recueil des Cours*, 1936, Vol. II, p. 171.

⁶ The League's immunity of course protects it from suit by its own officials. The staff of the Secretariat and the International Labor Office, however, is not without recourse against the League. A special tribunal (the League Administra-

none of them, whatever his category, can be arrested when on the League's premises, unless the League waives its own immunities. Nor, without the same consent, can the personal dossier of an official be investigated, or legal service be effected against an official on League premises. Most important in practice, an official's claim on his League salary cannot be attached.⁷

PART II. OFFICIALS NOT OF SWISS NATIONALITY

1. *Personal Inviolability*

First-Category Officials

The agreement of 1921 granted officials of the first category "inviolability, in the technical signification given to this word in international law."⁸ While this statement is, to say the least, somewhat obscure, officials of the first category in fact enjoy under it freedom from any form of duress or compulsion by the local police or other administrative authorities.

The question of freedom from police jurisdiction in general will be discussed below in connection with exemption from criminal jurisdiction. There are, however, three other aspects of the concept of "personal inviolability" which have to be mentioned here: freedom from the "*Police des Etrangers*" (control of aliens), special protection, and inviolability of residence.

(a) *Freedom from the "Police des Etrangers."* — League officials are not subject to expulsion from the Canton of Geneva or from the Confederation. They do not have to obtain residence permits or report personally to the authorities

tive Tribunal) was established by the Assembly to adjudicate on any request presented against the League by a member of the Secretariat or the International Labor Office in connection with the fulfillment of the terms of his or her appointment.

⁷ A case involving this point was decided by Swiss courts in the early years of the League; see Charles H. Levermore, *Second Year Book of the League of Nations, January 1, 1921–February 6, 1922* (New York, 1922), p. 117.

⁸ No corresponding clause appears in the 1926 *Modus Vivendi*.

like other foreigners in Switzerland. They are provided by the Federal authorities with special identity cards (*cartes de légitimation*) which take the place of the cards issued by the cantonal authorities to ordinary aliens.

The identity cards of first-category officials, which are issued on the basis of the lists submitted by the Secretary-General and the Director of the International Labor Office to the Federal Political Department, are of two kinds: for the highest officials, pink with a diagonal red bar, for other first-category officials, plain pink. Each card bears a photograph of the holder and is countersigned by the Secretary-General or the Director of the International Labor Office. The "*carte de légitimation*," which indicates to police and other authorities the quality of the official concerned and consequently the type of privilege or immunity to which he is entitled, has been the *vade mecum* of every League official throughout his or her stay in Switzerland.

(b) *Special protection*. — On this point a *cause célèbre* of 1928 — the *de Justh* incident — is of interest. Count Bethlen, who had been attending a meeting of the Council's committee on Hungary, was assaulted in the League building on leaving the meeting-room. The Federal Court which passed judgment on the assailant, a certain de Justh, based its decision on Article 43 of the Federal Penal Code. It ruled that the protection which this article grants to "representatives of a foreign power accredited to the Swiss Confederation, was extended to representatives of members of the League of Nations by Article 7, paragraph 4, of the Covenant of the League, which has received force of law in Switzerland by its publication in the Official Register."⁸

Count Bethlen was a representative of a member of the League, not a League official. But one of the judges argued that if the special protection granted by Article 43 of the

⁸ Roger Secrétan in *Revue de droit international privé*, Vol. XXII (1927), p. 551 (translation).

Penal Code to heads of foreign missions (not to counsellors, secretaries, and attachés) were extended to representatives of the members of the League, League officials, to whom the Covenant grants the same privileges and immunities as to those representatives, would necessarily enjoy the same protection.⁹

It may be mentioned here that the Federal Council, in its Message of August 4, 1919, had stated that it might become necessary "to insert in the federal legislation . . . clauses insuring special protection" to officials of the League. Actually, in the Draft of a Federal Penal Code a clause was inserted dealing with special protection of League officials but limiting this protection to the Secretary-General and the Director of the International Labor Office.¹⁰ This clause appears as Article 297 in the Code as it finally came into force on January 1, 1942. It provides for punishment of anyone who publicly insults (*oeffentlich beleidigt*) the two persons concerned.

(c) *Inviolability of private residence.* — This question is not mentioned in the *Modus Vivendi*. But in 1921 a League Committee, the Committee on Amendments to the Covenant, dealt with it under Article 7, paragraph 5. Having noted the discrepancies between the English and French texts of that article,¹¹ the Committee pointed out¹² that only the English text provides for inviolability of buildings occupied by representatives of member states attending a meeting of the League. If the English text is to be interpreted as granting inviolability of residence to the representatives of the members (this was

⁹ Roger Secrétan in *Revue de droit international privé*, Vol. XXII (1927), p. 558.

¹⁰ Jacques Secrétan, *Les immunités diplomatiques des représentants des États membres et des agents de la Société des Nations* (Lausanne: Librairie Payot & Cie., 1928), pp. 70-71.

¹¹ "The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable;" "Les bâtiments et terrains occupés par la Société, par ses services ou ses réunions, sont inviolables."

¹² League of Nations, *Committee on Amendments to the Covenant, Second Report of the Committee to the Council* (L.N. document A.24 (1). 1921.V.), p. 6.

apparently the Committee's interpretation), clearly League officials enjoy the same prerogative. The Committee's report went on to observe that the effect of the discrepancy between the texts was "greatly reduced by the provision of the preceding paragraph of Article 7. The diplomatic privileges and immunities which the Representatives of the Members of the League enjoy when engaged on the business of the League include, according to the general usage, inviolability of domicile." This statement would imply that the residences of League officials who enjoy diplomatic prerogatives are likewise inviolable.

The official residence of the Secretary-General, which is League property, is clearly covered by Article 7, paragraph 5. The inviolability of the residences of other officials has been respected as a matter of practice.

Second-Category Officials

In principle, officials of the second category do not enjoy personal inviolability except as a result of the immunity from jurisdiction (involving freedom from administrative or police interference) which they enjoy "in respect of acts performed by them in their official capacity and within the limits of their functions." (*Modus Vivendi* of 1926, Article VII.) This provision will be discussed in the next section.

Officials of this category, like those of the first category, are not subject to the "*Police des Etrangers*" and hold special identity cards issued to them by the Federal authorities. These cards are blue but otherwise similar to those of first-category officials.

2. *Immunity from Jurisdiction*

First-Category Officials

The *Modus Vivendi* of 1921 provided that extraterritorial officials should enjoy "immunity from civil and penal jurisdic-

tion, as this is understood in international law." The later *Modus Vivendi* provides (Article VII) that they shall "enjoy immunity from civil and penal jurisdiction in Switzerland, unless such jurisdiction is waived by decision of the Secretary-General or Director of the International Labour Office." Immunity from penal jurisdiction implies immunity from police jurisdiction. "It is clearly understood, however," to quote the last paragraph of Article VII of the 1926 Agreement, "that the organisations of the League of Nations at Geneva will endeavour to facilitate the proper administration of justice and execution of police regulations at Geneva."

It is made clear in the Staff Regulations ¹³ of the Secretariat that these immunities "furnish no excuse to the officials who enjoy them for non-performance of their private obligations or failure to observe laws and police regulations." A corresponding clause appears in the Staff Regulations of the International Labor Office, a statement of whose first director, M. Albert Thomas, is of interest in this connection: ¹⁴

It might be thought by some that the privileges thus granted to international officials place them above the law, and above any legal penalty for the non-execution of their obligations; that, in short, the immunities place them permanently beyond the reach of justice. Such an idea would be entirely wrong. It may be stated on the contrary that in no case has the possession of diplomatic immunities resulted in an official of the Office evading legal responsibility for his personal actions.

(a) *Procedure short of court action.* — The following rule for the police was laid down by the Geneva authorities: "The police officer who is confronted with a violation of a law or regulation committed by an official of the Secretariat or of the International Labor Office will confine himself to making a circumstantial report, which will be transmitted with as little delay as possible" ¹⁵ to his superiors, who will decide in each

¹³ 1933 edition.

¹⁴ International Labour Conference, Eighth Session, 1926, Vol. II: *Report of the Director Presented to the Conference*, p. 50.

¹⁵ *Aperçu, op. cit.*, p. 7 (translation).

case what action should be taken on that report. If they consider it necessary, they may communicate with the Secretary-General or the Director of the International Labor Office on the subject.

Under the arrangement of 1921, the Swiss authorities reserved the general right to call the attention of the Secretary-General or the Director of the International Labor Office to the conduct of any official, if such conduct gave ground for complaint, and ask for the application of disciplinary measures, including the dismissal of the official concerned.

While officials are privileged in the sense that they receive from the police a standard of courtesy appropriate to their official status, the possibility of being thus reported to the League authorities not only for unlawful but even for any improper conduct has proved to be an efficacious guarantee of their good behavior. The Personnel Office and the Legal Adviser of the institution to which the official belongs examine any case brought to their attention and if they are satisfied that the charge is justified, advise the Secretary-General or the Director of the International Labor Office on the disciplinary or other measures that seem most appropriate. In the vast majority of instances, the offenses reported have not been at all serious and nothing more than a warning or rebuke has been called for; to the knowledge of this writer the League authorities have found it necessary in only one case to take drastic action against an official for an offense reported by the police. In this case, it was arranged that proceedings would not be taken if the official concerned resigned immediately and left the country, which he did.

The smooth working of these arrangements has been facilitated by the close contacts established between the Secretariat and International Labor Office authorities and the Geneva Police Department. Article 12 of the *Modus Vivendi* of 1926 prescribes that "Correspondence relating to the application of

the rules of the *modus vivendi* between the organizations of the League of Nations and the Swiss authorities shall be exchanged through the intermediary of the Federal Political Department, except in cases in which some other procedure has been prescribed." An exception of this kind — and by far the most important exception — is the provision that in the case of acts committed in Geneva, even those falling under penal law, the Geneva Cantonal Department of Justice and Police may communicate directly with the Secretary-General or the Director of the International Labor Office without passing through the intermediary of the central authorities in Berne. Cases considered important have, however, been brought by the local authorities before the Federal Political Department.

Civil law cases involving first-category officials have been few in number and in scarcely any case has judgment been given implicating the good conduct of an official. In case of complaint, for example, of non-payment of debt or non-fulfillment of contract, if the League authorities have believed that the official was at fault, they have put the strongest pressure on him to meet his obligations in full. In some cases involving debts, officials have spontaneously authorized the League to pay their creditors direct part of their monthly salaries till the extinction of the debt. When so doing, however, the League has taken care not to assume any obligation towards the creditors and to specify clearly that it was acting only as a benevolent agent for the officials concerned and for such time as it would deem proper. The Secretary-General of the League, incidentally, has never admitted the possibility of an official ceding or assigning his right to his League salary.

(b) *The problem of extraterritoriality with special reference to jurisdictional domicile.* — The 1921 and 1926 agreements described first-category officials as "extraterritorial" staff. In the earlier agreement, "extraterritoriality" was used as a general term to indicate the prerogatives and immunities of those

officials; and it was assumed that a person enjoying this status continued to be domiciled in his own country. In accordance with this concept, it was contemplated that legal proceedings might be taken in the officials' own countries in case of a breach of law.¹⁶ At the same time a waiver clause was inserted¹⁷ which made action by Swiss courts possible.

This legal fiction of extraterritoriality has in fact been abandoned in modern times as the basis of the prerogatives to be granted to diplomatic agents under international law.¹⁸ In

¹⁶ This procedure would correspond to the regime applicable to diplomatic agents. But its application to League officials would be inconsistent with recognition of their special situation, requiring certain immunities in their own countries. It should also be observed that, while the laws of different countries vary, the scope of the jurisdiction of national courts in respect of acts committed abroad is usually rather narrow.

¹⁷ See section on "The Importance of Waiver," above, pp. 24-26.

¹⁸ That it was not the intention of those who framed the Covenant to base the immunities of League officials on the fiction of extraterritoriality may be inferred from the change made in Paris in the wording of the present Article 7, paragraph 5, Article 12, paragraph 2, of the British Draft Convention of January 20, 1919, read as follows (Miller, *op. cit.*, Vol. II, p. 109): "All buildings occupied by the League, or by an organisation placed under the control of the League or by any of its officials, or by the representatives of the High Contracting Parties at the capital of the League shall enjoy the benefits of extraterritoriality." Article 5 of the Hurst-Miller Draft (*ibid.*, p. 233) read: "... and the buildings occupied by the League or its officials or by representatives attending its meetings shall enjoy the benefits of extraterritoriality."

The following discussion is recorded at the meeting of the Commission on the League of Nations on March 22, 1919 (*ibid.*, p. 506):

"M. Larnaude (France) demande la suppression du mot 'Exterritorialité' qui peut donner lieu à des difficultés d'interprétation et qui rappelle l'époque où il y avait le droit d'asile dans la maison du Consul et de l'Ambassadeur. Cette idée est abandonnée par le droit moderne et il est préférable d'employer le mot 'inviolabilité.'"

"Lord Robert Cecil (Empire britannique) déclare qu'au point de vue anglais l'expression 'extraterritorialité' est correcte.

"Le Président renvoie au Comité de rédaction le soin d'adopter l'expression la meilleure."

The text finally adopted reads: "The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable." If the term extraterritoriality was not considered appropriate to describe the privileged position of the League buildings, it was probably not considered appropriate to define the status of the officials.

The two agreements between the League and the Swiss authorities stated that the League buildings are "inviolable, that is to say, no agent of the public authority may enter them in the exercise of his duties, without the consent of the Secretariat or of the International Labour Office." In the de Justh case, the

the 1926 *Modus Vivendi* no attempt is made to derive the prerogatives of first-category officials from the concept of "extraterritoriality," although the term "extraterritorial" is applied to them. When, after this agreement was concluded, extraterritoriality in its rigid sense was invoked by the State Attorney in Geneva, his opinion was not upheld by the Court of First Instance (July, 1927). The summary of the case, as it appears in the *Annual Digest*, may be quoted in full because of the importance of the principle involved:

THE FACTS.—On 23 March, 1927, Mrs. P., wife of S. P., a first category official of the International Labour Office of British nationality, commenced divorce proceedings against her husband. By a letter of 21 June the Deputy Director of the International Labour Office waived S. P.'s immunities on behalf of the Office in respect of civil proceedings, and by a letter of the same date S. P. himself renounced the benefit of his immunities in respect of the proceedings instituted by his wife. On 5 July the Procureur-General, Geneva, submitted to the Court that it was incompetent on the ground that the defendant being a representative of a foreign country must be deemed never to have left his country and to retain his domicile there in virtue of the legal fiction of extraterritoriality.

HELD: that the Court was competent on the following grounds:

(1) Extra-territoriality was a fiction. It was merely the ensemble of the privileges and immunities of diplomatic agents and of the officials of the League of Nations and International Labour Office who were assimilated to such agents.

(2) On the waiving of diplomatic immunity the Court of the place of residence of the diplomatic agent became competent to take jurisdiction of any dispute which did not affect the performance of his official duties.

(3) That as the defendant had lived in Geneva as an official of the International Labour Office since 1923 and had taken a flat until 14 February, 1928, and as there was nothing to show that he intended to leave his official position he must be considered to be resident at Geneva with the intention of remaining there. He was therefore domiciled in the Canton, and the Swiss authorities had

Secretary General expressed the wish to see de Justh punished by the Swiss courts for his act committed within the League building. The Federal Court which dealt with the case stated that the League buildings while inviolable "ne sont cependant pas extraterritorialisés."

jurisdiction. The argument that in view of his exemption from taxes S. P. was not domiciled at Geneva was not decisive seeing that the non-extra-territorial staff of the League also enjoyed such exemption.¹⁹

Some years earlier, in 1923, the same court had considered itself to be competent in the divorce suit of a first-category official against his wife on the ground that the official had his domicile in Geneva. This recognition of domicile by the court must be presumed to have followed from the waiver of the official's immunity implied in his bringing suit before a Swiss court.²⁰

(c) *Giving of evidence.* — In accordance with the practice applicable to members of the diplomatic corps in Berne, officials are not required to give evidence in court. But they have frequently testified in court and, in order to facilitate the administration of justice, have indeed been encouraged to do so,²¹ subject to immunity in this respect being waived by the Secretary-General or the Director of the International Labor Office. In the case of the highest officials, arrangements have sometimes been made for the local authorities to call on the official concerned to receive his evidence.

Second-Category Officials

Unlike officials of the first category whose immunity from legal process, civil or criminal, is general and unqualified, officials of the second category only enjoy such immunity in respect of acts performed by them in their official capacity and

¹⁹ *Annual Digest of Public International Law Cases, Being a Selection from the Decisions of International and National Courts and Tribunals* . . . (London, etc.: Longmans, Green and Co., 1929—), 1929 and 1930, pp. 316–17. In an earlier case concerning a Permanent Delegate accredited to the League (*ibid.*, 1925 and 1926, p. 325), the opinion of the Court on the implications of extraterritoriality was ambiguous.

²⁰ Cf. Roger Secrétan, *Revue de droit international privé*, Vol. XX (1925), p. 24. In these judgments, the term "domicile" is used as understood in Swiss law — i.e., as the equivalent of residence rather than domicile in Common Law terminology.

²¹ See Appendix 3 to Annexes I and II, below.

within the limits of their functions. "They shall remain subject to local laws and jurisdiction," Article VII of the 1926 *Modus Vivendi* continues, "in respect of acts performed by them in their private capacity." This limitation is explained by the large number of officials involved and the fact that the second category includes subordinate as well as part of the administrative staff. A corrective had, however, already been provided for under the earlier agreement: if judicial or police measures taken against a member of the non-extraterritorial staff were of such a nature as to impede the work of the League services, the Secretary-General (or the Director of the International Labor Office) could bring the matter to the attention of the authorities, who were to take account of his representations so far as was compatible with public order.

Although officials of the second category can be sued in connection with their private affairs, such matters have in practice usually been settled out of court. Moreover, it must be repeated that the salaries of any League officials, to whatever category they may belong, are unattachable owing to the League's own immunities.

3. *Tax Exemption*

First-Category Officials

From the outset, first-category officials have enjoyed the same complete exemption from direct taxes as "extraterritorial" members of diplomatic missions at Berne. They were granted fiscal immunity under the 1921 Agreement. But legislation to exempt them was begun as early as December, 1920, when an executive order, based on the Federal Decree of September, 1920, concerning the new Emergency War Tax, exonerated from that tax the officials of the League of Nations and "those of the institutions attached to its Secretariat, in

particular the International Labour Office, in so far as, in application of Article 7 of the Covenant of the League of Nations, these persons are admitted by the Federal Political Department to the benefit of extraterritoriality."²² Ordinary direct taxes in Switzerland at that time were not federal but cantonal. League officials of the first category were duly exempted by two decrees of the Council of State of the Canton of Geneva dated June 14, 1921, and April 18, 1922, and later by Article 7 of the Geneva tax law of March, 1923, modified by the law of December 24, 1924.²³

Article 8 of the 1926 *Modus Vivendi* provides that "Officials of the organisations of the League of Nations who are members of the staff of the first category enjoy fiscal immunity. Consequently they are exempted from all direct taxes with the exception of the charges attaching to immovable property (the land tax)."²⁴ A further exception, which was the subject of an amendment introduced in 1928, covers "death duties to which they may be liable as heirs or legatees of a person who has died in Switzerland or as beneficiaries under a *donatio inter vivos* the donator of which is domiciled in Switzerland."

Officials were exempted from the *Impôt fédéral de Crise* (Federal Emergency Tax) introduced in 1934, as well as the various special federal taxes levied during the war. In the case of one of these, however, the *Impôt pour la Défense Nationale*, they were specifically not exempted in respect of certain types of assets representing private investments and holdings.

Officials are liable for the payment of indirect taxes (except in so far as they enjoy customs exemption) and charges. These "charges" cover, for example, the cost of the actual license

²² Quoted in J. Secrétan, *Les immunités diplomatiques*, *op. cit.*, p. 104.

²³ *Ibid.*

²⁴ But they are entitled to deduct any mortgages within the limit of Article 44 of the *Loi générale genevoise sur les contributions publiques*.

plates for automobiles. Radio licenses and shooting and fishing licenses must also be paid for.

Second-Category Officials

Members of the staff of the second category were exempted by the 1926 Agreement (1) from the tax on salary, (2) from the tax on capital or income, (3) from the emergency Federal War Tax. Under the 1921 Agreement, the exemption from the tax on fortune or income was granted only in so far as the income did not exceed the amount of the official's salary; but this limitation was abandoned in 1926. What second-category officials in fact had to pay were the *taxe personnelle* (10 francs a year), the land-tax on real property and the local taxes on cars, bicycles, and dogs.

Like officials of the first category, they have been exempted from payment of the various federal taxes subsequently introduced.

4. *Customs Facilities*

The 1926 *Modus Vivendi* (Article 10) refers to the "regulations, the text of which was communicated to the Secretary-General . . . on January 10, 1926." This communication contained the relevant clauses of the Federal Customs Law of November 1, 1925. Article 14, paragraphs 5 and 8, of that law,²⁵ together with a decree of the Federal Council dated July 8, 1926, lay down the scope of the facilities to be accorded to the different categories of officials. The regime differed only slightly from that previously applied under the 1921 arrangement.

²⁵ A. H. Feller and Manley O. Hudson, *A Collection of the Diplomatic and Consular Laws and Regulations of Various Countries* (Washington: Carnegie Endowment for International Peace, 1933), Vol. II, pp. 1178-79.

First-Category Officials

The Secretary-General, the Deputy and Under Secretaries-General and Directors in the League Secretariat, and the Director, Deputy Director, and Chiefs of Division in the International Labor Office are assimilated to heads of diplomatic missions accredited to the Swiss Confederation and are granted exemption from luggage examination and complete customs exemption in respect to articles and supplies destined for the use or consumption of themselves and their households.

Other first-category officials enjoy limited facilities only. The most important of these is in the matter of "*première installation*." Any foreigner taking up residence in Switzerland is allowed to bring his *used* furniture and belongings into Switzerland free of duty within one year of his taking up residence in the country. Under the first arrangement, officials might "introduce free of duty only used articles when they first establish a home"²⁶ in Switzerland, but, in 1926, facilities were extended to permit them to bring in new as well as used articles and to include automobiles,²⁷ bicycles, etc., as well as furniture. They are permitted to apply for the privilege at any time and not only within the first year of residence; but it is granted only once.²⁸ When they avail themselves of it, officials must undertake not to dispose of the imported articles in Switzerland either as a gift or against payment for a period of five years without first paying the customs duties.

²⁶ Secretary-General's Circular of 1922, reproduced in Appendix I to Annexes I and II, below.

²⁷ An interesting reservation is attached to this privilege in the case of all first-category officials. The official importing an automobile duty-free has to give an undertaking that he will not dispose of the automobile in Switzerland without having paid the duty. However, if he disposes of it two years after importation, only one half of the duty is payable; four years after importation the customs exemption, even in the case of sale of the car, is definitive.

²⁸ J. Secrétan, *Les immunités diplomatiques*, op. cit., pp. 105-6.

Temporary officials do not enjoy the above facilities until they have been in the service six months, and only do so if their engagement is continued. If, however, they wish to import new personal effects at once, any duty that they may pay is refunded on application when the period of six months has elapsed.

The reservation concerning reciprocity between the country of origin of the goods and Switzerland applying to certain customs facilities enjoyed by all foreigners (for example, the right of women who came to settle in Switzerland on the occasion of their marriage to import trousseaux and wedding gifts free of duty) is waived as regards first-category League officials.

First-category officials enjoy certain additional facilities that are granted to the extraterritorial members, other than the heads, of diplomatic missions in Berne. The formalities connected with the examination of their luggage by customs officers at the frontier are to be "limited to what is absolutely necessary," and, in practice, considerable latitude has normally been allowed in the case of officials bringing clothes and other articles of personal consumption from their home countries. Minor requests, such as for extensions of time-limits to the use of privileges, are to be sympathetically considered and have in fact always been granted provided that a reasonable case in support of the request can be shown. Since the introduction of the Swiss import licensing system in 1932, officials have been entitled to obtain upon demand licenses for the importation of any objects destined for their own consumption.

Second-Category Officials

No customs facilities were provided under the 1926 *Modus Vivendi* in favor of second-category officials; they enjoy the same minor facilities as were accorded to first-category officials

in regard to customs formalities under that of 1921, and some of the courtesy privileges — for example, the privilege of obtaining non-quota (*hors contingent*) licenses for the purpose of importing goods subject to license.

5. *Visa Facilities*

This point was dealt with in the 1921 Agreement only, visa requirements having been generally abolished by Switzerland before 1926.

First-Category Officials

Officials of this category have a right to a Swiss diplomatic visa on their passports, whether those passports are diplomatic or not. The visa is obtainable from the Federal Political Department or from any Swiss Legation for a single journey or unlimited journeys within the period of a year.

Second-Category Officials

The right to a so-called "official visa," under the same conditions, is enjoyed by second-category officials.

6. *Extension of Privileges to Officials' Families, etc.*

First-Category Officials

Here one has to revert to the 1921 Agreement. The privileges and immunities granted to an official of this category are extended to his wife and children provided they live with him and do not exercise any profession in Switzerland.²⁹ Subject to the same proviso, an official's parents and parents-in-law

²⁹ In the case of members of officials' families proceeding for more than three months to a place in Switzerland outside the Canton of Geneva, arrangements were made whereby, subject to due notification being given to the Federal Political Department, the persons concerned were not asked to take out residence permits or pay taxes.

enjoy the same privileges regarding permits for temporary or permanent residence.³⁰ They have no other prerogatives, however.³¹

First-category officials are entitled to bring to Geneva from any country (or Swiss canton) what is known in diplomatic language as their "private suite" (secretaries, chauffeurs, domestic servants, etc.). But a distinction was made in favor of the highest officials whose domestic staffs were provisionally exempted from any formalities concerning residence.³² The domestic staffs of other first-category officials are "subject to the Federal and Cantonal regulations with regard to temporary or permanent residence." On the other hand, a refusal to permit residence "would only be contemplated in the case of undesirables."³³ Members of an official's "suite" enjoy no other privileges or immunities.

Second-Category Officials

The privileges enjoyed by the families of ordinary first-category officials are extended to the families of officials of the second category.

7. *Duration of Privileges and Immunities*

In diplomatic practice, when a diplomat resigns or is transferred to another post, he is given some time to arrange for his departure before immunities are withdrawn; if he dies, his

³⁰ The exemption from the obligation to report to the police on arrival in Switzerland with a view to obtaining a residence permit, extended to such members of any non-Swiss official's family as well as to the domestic staff of the highest officials, was withdrawn in September, 1939, following the promulgation of the wartime Federal Decree concerning the Control of Aliens. An Office Circular of the League Secretariat stated however that "Assurances have been given that the necessary permits (*régularisations*) will be accorded without difficulty."

³¹ Cf. *W. K. v. Office des Poursuites*, February 16, 1929. Reported in *Annual Digest*, 1929-1930, *op. cit.*, pp. 314-15.

³² Appendix 4 IA(4) to Annexes I and II, below. See footnote 29, above, this chapter.

³³ *Aperçu*, *op. cit.*, p. 5.

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widow or other dependents likewise continue for some time to be covered. Certain of the diplomats' immunities, of course, continue *ad infinitum* — e.g., immunity for acts committed in discharge of his functions.

To this practice, by and large, that applied in regard to League officials has conformed. Only one relevant case of a judgment by a Swiss court has been reported.³⁴ A permanent delegate to the League, not a League official, was involved but his status was similar to that of an official. The court considered itself to be competent in a suit referring to private acts committed by the delegate in Switzerland during his term of office. The conclusion may be drawn that, in civil cases at all events, a League official can, after the termination of his functions, be brought before a Swiss court for acts performed by him while he enjoyed immunity.

8. *Miscellaneous*

Certain further points, all bearing upon the question of the assimilation of League officials to members of the diplomatic corps, remain to be mentioned:

(a) Officials of all categories were expressly made subject to Swiss regulations concerning automobile and driving tests; it was provided, however, that the cars of members of the first category might carry a distinctive mark in addition to the usual registration number. For many years it was the custom that only the officials of the rank of Director or Chief of Division upwards placed a CD (*Corps diplomatique*) plate on their cars, but in the early thirties all first-category officials were invited by the League authorities to attach this sign to their cars, in order to facilitate police and customs control.

(b) As a precaution against incurring, by contract, any liability for the fulfillment of obligations which might be in-

³⁴ *Journal du droit international*, Vol. 54 (1927), p. 1179.

compatible with their position, officials were advised³⁵ to obtain the insertion of a so-called "diplomatic clause" in their leases on houses or apartments (a practice followed by the diplomatic corps at Berne). Such clauses normally provide that, should the lessee leave Geneva, either in performance of his League duties, or on his own initiative at the termination of his employment with the League, he is at liberty to cancel the lease at three months' notice. In law, the "diplomatic clause" is of course wholly unrelated to the diplomatic status of those to whom it is accorded. That it was easily obtainable was nevertheless due to the special situation in which these persons have been placed as League officials, a situation recognized by local real estate agents as calling for corresponding concessions.

(c) Under the wartime rationing system in Switzerland, members of the diplomatic corps at Berne enjoyed a number of privileges. While certain of these privileges were accorded throughout the war to the highest League officials in Geneva, they were from the outset waived by the Secretary-General and the Director of the International Labor Office on behalf of other first-category officials as a gesture of solidarity between the staff and the Swiss people.

PART III. OFFICIALS OF SWISS NATIONALITY

The difficulties that arose in Geneva with regard to the tax exemption of Swiss officials have been mentioned in Chapter II. The legal position of these officials under the two agreements must now be described. A feature of this position was that, except on one minor point, no distinction was made between the treatment of officials of the first and second categories, a Swiss director and the most junior clerk being placed on a footing of equality. As noted in Chapter II, the

³⁵ Appendix 4 to Annexes I, and II, below.

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members of the auxiliary staff, almost all of whom were of Swiss nationality, were not covered by the *Modus Vivendi* and were not accorded by the Swiss authorities any of the immunities and facilities described below.

1. *Exemption from the "Police des Etrangers"*

Subject to the fulfillment of all the formalities prescribed in connection with voting and elections, Swiss officials are not required to take out a *permis de séjour* or a *permis d'établissement*, which is obligatory on ordinary Swiss citizens from other cantons who wish to reside in Geneva.

2. *Limited Immunity from Jurisdiction*

According to the 1921 Agreement, Swiss officials were made "immune from jurisdiction in respect of acts accomplished by them in their official capacity and within the limits of their duties." Article 9, paragraph 1, of the 1926 *Modus Vivendi* is to the same effect, namely, that "Officials of Swiss nationality may not be sued before the local courts" in respect of such acts. Such immunity from legal process clearly covers exemption from the obligation to give evidence on any point connected with the official duties of the agent concerned.

In the early negotiations the Secretary-General had expressed a desire to be able to obtain suspension of judicial proceedings involving Swiss officials when such proceedings might hinder the work of the Secretariat.³⁶ No provision to this effect, such as appears in the arrangement relating to second-category international officials, was inserted in either agreement, but it is believed that in practice the Swiss authorities have endeavored to meet any representations made.

Needless to add, the officials of Swiss nationality are not

³⁶ Cf. Extract from the Minutes of the Conference held at Berne, January, 1921, in Appendix 1 to Annexes I and II, below.

immune from legal process in regard to matters concerning their private life. But as in the case of other League officials, their salaries cannot be attached. This was recognized by a Geneva court in 1929.³⁷

3. *Passports*

In this respect only was a distinction made between Swiss officials of the first and second category. Those "who by reason of their duties are classed in the first category" are entitled to an "official" passport when proceeding abroad on a mission. In fact, the practice has been to give such officials diplomatic passports for the purpose of missions abroad.

4. *Tax Exemption*

The clauses of the 1921 Agreement relating to this matter and the difficulties that arose later have been discussed in Chapter II. The *Modus Vivendi* of 1926, which settled the question immediately at issue, provided in Article 9, paragraph 2, that the salaries paid to Swiss officials "are exempted from cantonal and municipal direct taxes." As regards the Federal War Tax,³⁸ a compromise arrangement emerged under which the salaries of Swiss officials were exempted "until the expiration of the contracts of service which the persons concerned at present hold and which make provision for a salary payable free of taxes." The note on this subject annexed to the *Modus Vivendi* goes on as follows:

By means of this temporary exemption, the Federal Council desires to prevent the possibility of the payment of the Federal War Tax resulting, through the operation of the clauses of the contracts in force, in imposing, even indirectly, any charge upon the budget of the League of Nations. In view of the character and

³⁷ *Annual Digest*, 1929-1930, p. 313.

³⁸ Not to be confused with the new federal taxes imposed in Switzerland during the recent World War.

special object of the Federal War Tax and certain considerations of principle, the Federal Council does not feel able to contemplate permanent exemption.

This arrangement did not represent a final solution, the Secretary-General stating that he felt it necessary to "give further consideration to the various legal and administrative difficulties which might arise from differentiations in contracts." But in fact no further arrangement was concluded and the situation has never been altogether satisfactory, difficulties having frequently arisen on specific points.³⁹

5. *Military Service*

Under the Swiss militia system, men of military age are called up every year for a period of training. Those exempted on medical or other grounds pay a special tax (*taxe militaire*). Swiss officials of the League are not freed from their military obligations (including the obligation to pay the *taxe militaire* in case of exemption), but Article 11 of the 1926 *Modus Vivendi* provides that: "If the exigencies of training and the interests of the country permit, exemptions from or postponements of military service shall be granted to officials of Swiss nationality incorporated in the Federal Army in cases in which their compliance with an order calling them up for military service would be likely seriously to interfere with the normal working of the services of the League."

This matter has given rise on several occasions to correspondence between Geneva and Berne in regard to officials who were abroad or being sent abroad on mission or whose presence in Geneva was urgently required during the time set for their military service; but before the war no serious diffi-

³⁹ Officials of Swiss nationality whose contracts dated from before September, 1926, were exempted from the Federal Emergency Tax of 1934, but attempts by the League authorities to obtain from the federal authorities exemption for other officials of Swiss nationality failed. All Swiss officials were made subject to the special federal taxes introduced after 1939.

culty arose, the necessary exemption usually being granted by the authorities. The absence of adequate and precise arrangements, however, had somewhat unfortunate consequences during the war.

CHAPTER IV

THE REGIME IN THE NETHERLANDS

1. *Judges and Officials of the Permanent Court Not of Netherlands Nationality*

Two classes of persons connected with the Permanent Court enjoying diplomatic privileges and immunities at The Hague must be distinguished and considered separately. Their status as to diplomatic prerogatives was based on different texts and the actual prerogatives accorded to them have differed on several points. As mentioned in Chapter II, privileges and immunities were granted to the officials of the Court by Article 7, paragraph 4, of the Covenant and to the judges by Article 19 of the Court Statute. The Registrar was for these purposes assimilated to the judges. The other officials of the Court were divided into two categories, the higher officials (the Deputy Registrar and the drafting secretaries) enjoying special privileges.¹

Judges and Registrar. — The status of the judges and the Registrar was assimilated from the beginning to that of heads of missions at The Hague. As reported in a Memorandum prepared by the Registrar for the League Council in 1927,² the system followed in practice called for no special comment "in regard to the inviolability and extraterritoriality of members of the Court, or their immunity from civil and criminal jurisdiction." In the Agreement of 1928, the assimilation of members of the Court and the Registrar to heads of missions was confirmed, all enjoying not only the diplomatic

¹ See Annex III, below: "General Principles and Rules of Application Regulating the External Status of the Members of the Permanent Court of International Justice," Rules of Application, B.III.1 (a).

² *Official Journal*, 1928, p. 984.

privileges and immunities but also the "special facilities" granted to heads of missions. A distinction was made, however, between the judges and the Registrar, the former alone being granted the "prerogatives which the Netherlands authorities grant, in general, to heads of missions." The meaning of these terms "special facilities" and "prerogatives" is not quite clear but the exclusion of the Registrar from the enjoyment of the latter was of no practical consequence.³

It should be noted that the agreement contains no reference to the possibility of waiver for the members of the Court and the Registrar.

The judges and the Registrar were exempted from taxation under a series of rules promulgated by the Netherlands authorities in 1922 and the following years.⁴ The taxes involved included not only income tax but taxes such as those on bicycles and automobiles. When a turnover tax was introduced in the Netherlands in 1934, the judges and the Registrar were, at the instance of the Registrar, exempted as regards articles purchased for their personal use.⁵ They were granted customs exemption in respect of goods for their personal use in 1922.

With regard to identity cards, some difficulties arose in the earlier years which are described by the Registrar in the following passage from his Memorandum of 1927:

The question of identity cards cannot be regarded as settled so far as the Court is concerned. The established practice at The Hague, as in other capitals, is that members of the diplomatic corps are furnished with special cards showing their diplomatic status at a glance to the authorities, police officers, etc. The importance, indeed the necessity, of cards of this kind is beyond question, for without such cards, of which detailed particulars should be circulated to the

³ Hammarskjöld, *op. cit.*, p. 175.

⁴ List given in *Fourth Annual Report of the Permanent Court of International Justice (June 15th, 1927-June 15th, 1928)*, Publications of the Court, Series E, No. 4, p. 59 n.

⁵ *Tenth Annual Report of the Permanent Court of International Justice (June 15th, 1933-June 15th, 1934)*, *ibid.*, No. 10, p. 31.

competent authorities and police officers throughout the country, it would be much more difficult to avoid the occurrence of incidents.

The Ministry has not, however, arranged to issue identity cards in the names of the judges and officials of the Court, as has been done for "officials of the League" at Geneva. In response to a specific request, made at the beginning of 1925, the Ministry for Foreign Affairs has issued diplomatic identity cards to the President and the Registrar of the Court, but with the proviso that this must not be taken as a precedent. In this respect, therefore, members of the Court, even when at the seat of the Court and engaged on the business of the Court, are on much the same footing as diplomatists *in transitu*. This situation, however, is scarcely compatible with the position of members of the international judicial institution, who, in virtue of an international treaty, are engaged upon their duties at The Hague during a great part of the year.⁶

Subsequently, identity cards similar to those issued to heads of diplomatic missions were issued to all members of the Court and the Registrar,⁷ and, in 1939, the regime was extended to the Deputy Registrar. Since it was felt that these cards were not sufficiently "international" in character, other cards were issued in 1938 to the persons concerned by the President of the Court. They were valid for one year but were subject to renewal.⁸

The Registrar's Memorandum of 1927 reveals that the situation in regard to the families of the judges was not altogether clear at that time. The Agreement of 1928, however, expressly provided that the wife and unmarried children of the judges and Registrar shared the status of the head of the family "if they live with him and have no other occupation"⁹ while their private staff (private secretaries, servants, etc.) enjoyed "the same position as that accorded to the private staff of the heads of diplomatic missions."¹⁰ The rules regarding private staff are stated to have been applied with great liberality,

⁶ *Official Journal*, 1928, p. 984.

⁷ Hammarskjöld, *op. cit.*, p. 179.

⁸ Information furnished by Mr. L. J. Jorstad, former Deputy Registrar.

⁹ Annex III, below, Rules of Application, A.II.2 (b).

¹⁰ *Ibid.*, A.II.2 (c).

particularly as regards exemption from direct taxes.¹¹ This exemption from direct taxes, of course, only applied to persons of other than Netherlands nationality.

It would appear that *ad hoc* judges always enjoyed the same privileges and immunities as the members of the Court. This was indeed provided for in the original statute of the Court which was in force until February, 1936.¹²

On the subject of the duration of immunities the following official statement made in 1936 is of interest:¹³

When a member of the Court dies, it has been the practice of the Netherlands authorities to allow the widow of the deceased to retain his immunities for a certain time; in a recent case, this practice was confirmed by a written communication.

The Deputy Registrar and Court Officials. — As mentioned above, a distinction was made by the Netherlands authorities between the treatment of the higher officials and the other members of the Registry staff. The higher officials corresponded more or less to the first-category officials in Geneva. They were "accorded, in principle, as regards diplomatic immunities and privileges, the same status as diplomatic officials attached to the legations at The Hague,¹⁴ i.e., counselors (the Deputy Registrar) and secretaries of legations (drafting secretaries).¹⁵ The position of the other members of the staff, corresponding to second-category officials at Geneva, was not defined in the 1928 arrangement but, according to Hammar skjöld, it was the same in every respect as that of corresponding officials in the diplomatic missions at The Hague except in customs matters, where it was more favorable. For both categories, the Rules of Application provided that,

¹¹ Hammar skjöld, *op. cit.*, p. 176.

¹² *Ibid.*, pp. 175-76.

¹³ *Twelfth Annual Report of the Permanent Court of International Justice (June 15th, 1935-June 15th, 1936)*, Publications of the Court, Series E, No. 12, pp. 51-52.

¹⁴ Annex III, below, General Principles, II.

¹⁵ Hudson, *The Permanent Court of International Justice, 1920-1942, op. cit.*, p. 329.

in cases of doubt, questions concerning the status of officials should be settled by reference as far as possible to the regime in force at Geneva. The regulation of details in accordance with arrangements based on the practice at Berne might have led to some difficulty, but no such difficulty in fact arose.¹⁶

In the event of an official infringing a law or regulation, "the Registrar of the Court may, with the President's approval, after the case has been examined by the competent national authorities and a detailed report submitted to the Registrar, waive the immunity accorded to the official."¹⁷ This power of waiver appears never to have been used. The Registrar, writing in 1936, states that the question of waiver had presented itself on one or two occasions, but that the procedure had never even reached the stage of a report being presented by the Netherlands authorities.¹⁸

Waiver in the case of civil proceedings was not provided for. However, it can probably be assumed¹⁹ that if a case had arisen, the rules relating to criminal cases would, so far as they were applicable, have been followed.

All officials were from the outset granted exemption from taxation.²⁰ Exemption from the special taxes mentioned with reference to the judges and the Registrar was extended to the officials of other than Netherlands nationality.

Also from the outset a complete exemption from customs duties was granted to all non-Netherlands officials in respect of goods for their personal use. The procedure for obtaining free importation permits was very simple, involving merely the presentation of an application signed by the Registrar.²¹

The difficulties that arose in respect to identity cards in the case of both judges and officials have been referred to

¹⁶ Hammarskjöld, *op. cit.*, p. 178.

¹⁷ Annex III, below, Rules of Application, B.III.2 (d).

¹⁸ Hammarskjöld, *op. cit.*, p. 179.

¹⁹ *Ibid.*

²⁰ *Annual Report of the Permanent Court of International Justice, January 1st, 1922-June 15th, 1925*, pp. 103-4; Hammarskjöld, *op. cit.*, p. 180.

²¹ Hammarskjöld, *op. cit.*, p. 180.

above. So far as officials were concerned, these difficulties were met by the following provision of the 1928 Agreement:

The Netherlands authorities will not object to the competent authorities of the Court issuing identity cards to officials of the Court belonging to the various categories, so that these officials can, if need be, immediately furnish evidence of their external status according to the present Principles and Rules.²²

This arrangement was somewhat different from that applied at Geneva, the cards being issued by the Registrar and visaed by the Secretary-General of the Ministry for Foreign Affairs. There were two types of cards, for higher and other officials respectively. In order to avoid any possibility of abuse, the cards were made valid only for very short periods at a time.²³

Before the conclusion of the 1928 Agreement the position of the officials' families (as of the judges' families) was somewhat uncertain.²⁴ In the agreement it was provided that "the wife and unmarried children of the higher officials of the Court will share the status of the head of the family if they live with him and have no other occupation."²⁵ The same rule was applied in practice to the families of other officials. The agreement provided further that "the private staff of higher officials of the Court will enjoy the same position as that accorded to the private staff of diplomatic officials attached to the Legations at The Hague."²⁶

It may be of interest to note that in 1935, at the request of the Netherlands authorities, automobiles belonging to the judges and officials were given a special plate bearing the letters "CDJ" (*Cour de Justice*). Before 1935, some judges had used the ordinary diplomatic plate, "CD."²⁷

²² Annex III, below, Rules of Application, B.III.1(c).

²³ Hammarskjöld, *op. cit.*, pp. 178-79.

²⁴ Memorandum by the Registrar, *Official Journal*, 1928, p. 984.

²⁵ Annex III, below, Rules of Application, A.II.2(b).

²⁶ *Ibid.*, B.III.2(c).

²⁷ Information supplied by Mr. L. J. Jorstad.

The instructions for the Registry, issued in accordance with Article 23, paragraph 3, of the Rules of the Court, provide that:

The Registrar will take all steps necessary to preserve the diplomatic character conferred upon officials of the Registry under Article 7 of the Covenant of the League of Nations.²⁸

2. Judges and Officials of Netherlands Nationality

Reference has been made in Chapter I to the discussion in the First Assembly on the subject of Article 19 of the Statute of the Court. In spite of the change made in the drafting of the article in order to permit of an identity of treatment between judges irrespective of nationality, a distinction similar to that introduced in Switzerland has in fact always been made by the Netherlands authorities. The only prerogatives granted to judges of Netherlands nationality have been:

(a) that they should "not be answerable in the local courts for acts done by them in their official capacity and within the limits of their powers" and

(b) that "the salaries paid to them out of the budget of the Court will be exempt from direct taxes."²⁹

The provisions in regard to higher officials of Netherlands nationality were identical.³⁰ Nothing is said in the 1928 Agreement about other Dutch officials, but it would appear that as regards both jurisdictional and fiscal immunities, little or no distinction was in practice made between the two categories.

In his Memorandum of 1927, the Registrar made the following statement concerning fiscal exemption of Dutch officials in general, who in fact constituted the majority of the Registry staff:

²⁸ Text of March 31, 1938, Article 42.

²⁹ 1928 Agreement, Annex III, below, Rules of Application, A.II.3.

³⁰ *Ibid.*, B.III.3.

As regards persons of Netherlands nationality who perform duties in connection with the Court, it has been established by a communication from the Netherlands Ministry for Foreign Affairs to the President of the Court, dated October 14th, 1922, that their emoluments in respect of such duties will not be considered for the purpose of assessment for income-tax or for the "national defence tax."³¹

Special identity cards were issued to Netherlands officials of the lower category.³²

No interference with the work of the Registry occurred as the result of the calling up of Netherlands officials for military service. At the time of mobilization in 1939, few of these officials were of military age or fit for service. One minor official, however, was deferred at the request of the Registrar.³³

³¹ *Official Journal*, p. 984.

³² Hammarskjöld, *op. cit.*, p. 179.

³³ Information supplied by Mr. L. J. Jorstad.

CHAPTER V

STATUS OF LEAGUE OFFICIALS PERFORMING FUNCTIONS OUTSIDE SWITZERLAND ¹ AND OF PERSONS ACTING FOR ORGANIZATIONS CONNECTED WITH THE LEAGUE

1. *General Considerations*

The Covenant does not restrict the enjoyment of diplomatic privileges to League officials performing their functions at Geneva. The British Draft Convention of January, 1919, from which we quoted in Chapter I, expressly contemplated the granting of diplomatic prerogatives to "the members of any judicial or administrative organ or of any commission of enquiry working under the sanction of the League"; and it must be assumed, in view of the general and unrestricted terms of the text finally adopted, that this was the intention of the drafters of the Covenant. Nor was there any doubt that League officials stationed, or on temporary mission, in any member state enjoyed diplomatic immunities not only in that state but also in any member state through whose territories they had to travel² in the course of their official duties. It will be recalled that, in the opinion of the Advisory Committee of Jurists of 1920,³ the diplomatic prerogatives granted to judges of the Permanent Court included the right to immunities in the countries through which they traveled on their way to and from the Netherlands.

¹ Exclusive of the judges and officials of the Permanent Court in the Netherlands, whose position has been dealt with in Chapter IV, above.

² The question of travel facilities of League officials forms the subject of Chapter VII, below.

³ Chapter I, above, pp. 5-6.

A fortiori, respect for the prerogatives of officials implied the duty of the state where an official resided — were it his own or another state — to permit him to leave the country for the purpose of discharging his functions. This point was also brought out in connection with the prerogatives of the judges of the Permanent Court, as shown in the following extract from the *Fourteenth Annual Report* of the Court:

5.IV.35 — In connection with a discussion concerning the assembly of the Court in times of emergency, the question was raised whether it was the absolute duty of a judge to comply with a summons, no matter what rules might be laid down by the law of his own country compelling him to remain there. The President referred to the terms of Article 19 of the Statute and observed that that instrument, being an international treaty, took precedence over any national regulations of a country which had adhered to it. If the State of which a judge was a national objected to his leaving the country, the judge should urge this consideration, and if that proved ineffective, he should at once communicate with the President.⁴

In some countries special laws or regulations have been issued regarding the prerogatives to be enjoyed by international officials. A Polish ordinance of 1926 accorded customs exemptions to "persons sent to Poland in a permanent and official character as representatives of international institutions, such as the Secretariat of the League of Nations, the International Labor Office, the Permanent Court of International Justice, or other permanent international institutions of a similar character."⁵ The Serb-Croat-Slovene (Yugoslav) Government intimated in 1927 that officials of the Secretariat and the International Labor Office would be given customs exemption on the importation into the country of

⁴ Publications of the Permanent Court of International Justice, Series E, No. 14, p. 128. It may be mentioned that in November, 1939, in the case of the Electricity Company of Sofia and Bulgaria, the Bulgarian Government prevented the Bulgarian national judge from leaving his country for The Hague. Permanent Court of International Justice, Series A/B, No. 80, p. 6.

⁵ Hudson and Feller, *op. cit.*, p. 1018.

articles for their own personal use.⁶ In Hungary, diplomatic immunity was assured to "members of international courts and of commissions in case diplomatic immunity has been accorded to them in virtue of a treaty or by international custom."⁷ A Czechoslovak government ordinance of 1927 provided that "officials of the League of Nations and officials of the International Labor Office are to be considered as persons entitled to extraterritoriality under international law and therefore the above-mentioned persons enjoy exemption from state and other public taxes and imposts."⁸

While the principle that a League official is entitled to diplomatic prerogatives wherever he exercises his functions has been clear, there has been some doubt as to how far the term "League official" should extend. An elaborate network of international organs was created in connection with the League and the degree of that connection varied widely. It is proposed in this chapter to give some examples of the status of international officials working for the League outside Geneva or for organizations associated with the League, without trying to decide in each case whether the persons concerned are or were "League officials" and entitled to diplomatic prerogatives under the Covenant. In some cases, diplomatic prerogatives have been expressly granted to them in the texts governing their appointment; and sometimes reference is made in these texts to Article 7 of the Covenant. But it is not always clear whether prerogatives have been granted because Article 7 was considered to be applicable or, on the contrary, because its applicability was considered to be doubtful or even excluded without a special provision.

The prerogatives enjoyed by officials in states members of the League and in territories under League control will first be considered.

⁶ International Labour Conference, Tenth Session, 1927, Vol. II: *Report of the Director Presented to the Conference*, p. 31 n.

⁷ Hudson and Feller, *op. cit.*, p. 677.

⁸ *Ibid.*, p. 360.

*2. Status in Territories of Members of the League
or under League Control*

Branch Offices. — The first group of persons that must be mentioned comprises the officials stationed abroad as members of the branch and liaison offices of the Secretariat and of the national correspondence offices of the International Labor Office. Their position is peculiar inasmuch as they are, as a rule, nationals of the countries in which the offices are situated. While they have in most cases been granted full exemption from taxation on their salaries,⁹ their position in other respects has never been authoritatively defined.

Eastern Epidemiological Intelligence Bureau. — Those members of the staff of the Eastern Epidemiological Intelligence Bureau at Singapore (a Bureau forming part of the League Health Organization) who were appointed by the Secretary-General — viz., the Director, the Deputy Director, and the Statistician — enjoyed diplomatic status. Each year the Director was required to furnish the local authorities with the names of the officials concerned. The question of fiscal exemption was of no practical importance, even for the locally recruited staff, there being no direct taxes at Singapore, while customs duties were levied on a very limited number of commodities.

The locally recruited staff would no doubt have enjoyed immunities with respect to their official acts had the point been raised in practice.

⁹ As regards the Berlin Office, cf. O. Göppert, "Der Völkerbund; Organisation und Tätigkeit des Völkerbundes," *Handbuch des Völkerrechts*, Bd. 4, Abt. 1B (Stuttgart, 1938), p. 149, n. 23.

As a result of negotiation, the French Government exempted officials of the League Secretariat and the I.L.O. of French nationality working in France from the *Impôt cédulaire sur les Traitements et Salaires* (Specific Tax on Salaries) but would not permit them to deduct their official salaries from their total income for the purpose of the *Impôt général sur le Revenu* (General Income Tax). The I.L.O. decided to reimburse their officials such part of the General Income Tax paid by them as corresponded to their official salaries, and this practice was followed by the League Secretariat.

League High Commissioners, etc. — The persons falling under this head included the High Commissioner in Danzig,¹⁰ the High Commissioner for Refugees, the High Commissioner for the Repatriation of Prisoners of War (1920–22), the High Commissioners in Austria and Hungary under the Financial Reconstruction schemes of 1923 and 1924 respectively, the representative of the League in Austria and the representative of the Financial Committee in Hungary in later years, and the Commissioner acting under the Protocols of 1926 and 1928 in Bulgaria. The members of the Greek Refugee Settlement Commission (1923–30) appointed by the League Council (the President and Vice President) may also be mentioned in this connection.¹¹

In some of these cases, the extent of the immunities to be granted was informally agreed upon between the government and the League organ concerned in the course of the negotiations leading to the adoption of the scheme with which the Commissioners were connected; in other cases,¹² the immunities formed the subject of a special provision in the instrument under which the commissioners were appointed.

In several cases, the staff of these officials also enjoyed more or less extensive privileges. In the Austrian Protocol of 1932, for example, the staff of the representative of the League was

¹⁰ For special provisions on customs exemption to be enjoyed by this official in Danzig, see Hudson and Feller, *op. cit.*, p. 1017.

¹¹ The two other members of the Commission were appointed by the Greek Government with the approval of the Council and could be replaced only with the latter's consent.

It is interesting to note that although no privileges were granted to the persons employed by the Commission, certain measures to safeguard their position were taken in 1925, as a result of difficulties that arose in that year. These difficulties were settled by a decree of the Greek Government to the effect that no judicial proceedings could be instituted against persons employed by the Commission except at the instance of the Commission or of the Minister of Justice. "Eighth Quarterly Report on the Work of the Greek Refugee Settlement Commission," *Official Journal*, 1926, p. 322.

¹² Organic Statutes of the Greek Refugee Settlement Commission, Article 4 (September 29, 1923), *Official Journal*, 1923, p. 1508; Protocol concerning the Settlement of Bulgarian Refugees, *ibid.*, 1926, p. 1344; Austrian Protocol, July, 1932, Annex III, *ibid.*, 1932, p. 1471.

granted fiscal immunities.¹³ In the Bulgarian Protocol, however, the enjoyment of immunities was expressly limited to the Commissioner and his substitute, if any.

Although appointed by the Council of the League, Mr. James G. McDonald, High Commissioner for Refugees Coming from Germany from 1933 to 1936, was not a High Commissioner of the League of Nations. For political reasons, his office was separated from the League. Consequently, neither he nor his staff enjoyed any diplomatic privileges and immunities under the Covenant. The position of Sir Neil Malcolm, High Commissioner of Refugees Coming from Germany from 1936 to 1938, was different. He was expressly appointed High Commissioner of the League of Nations. Both he and Sir Herbert Emerson, who has been High Commissioner for Refugees since 1939, have enjoyed the prerogatives of League officials.

In connection with the refugee question, the situation of the officials of the Nansen Office for Refugees, which was created in 1933 and wound up in 1938, should be briefly mentioned. Though set up by the League, this office was an autonomous body. Nevertheless, Article 19 of its Statutes, as submitted to the League Council for approval, provided for the granting to officials of "diplomatic privileges and immunities similar to those enjoyed by officials of the League."¹⁴ This clause was approved by the Council subject to the qualification that the question of the immunity of representatives of the Office stationed in various countries outside Switzerland should be settled by agreement between the Office and the governments of the countries concerned.¹⁵

Under Article 14 of the Staff Regulations, the Governing Body of the Nansen Office had to designate the officials of the Office who should enjoy diplomatic prerogatives.¹⁶ This clearly

¹³ The Adviser to the Austrian National Bank appointed under the same protocol was himself granted fiscal immunity only.

¹⁴ *Official Journal*, 1931, p. 311.

¹⁵ *Ibid.*, p. 157.

¹⁶ *Ibid.*, p. 752.

only applied to the Office staff in Geneva, whose prerogatives were directly based on Article 19 of the Statutes and did not require a special agreement with the Swiss Government. According to the interpretation of the Governing Body, the Office's organs and the agents of its administrative secretariat should be assured "the situation which, from the point of view of diplomatic privileges and immunities, is enjoyed by officials of corresponding categories on the Secretariat of the League of Nations." The Governing Body considered, in particular, that "the Secretary-General of the Office is, in that respect, placed on the same footing as a Director on the Secretariat."¹⁷ He was in fact accorded this status in Switzerland and his staff was assimilated, by and large, to the staff of the Secretariat and the International Labor Office.

The position of the agents of the International Relief Union set up in 1927 by a convention concluded under the auspices of the League may also be mentioned.¹⁸ Article 10 of that convention stipulates that:

The High Contracting Parties will endeavour to accord to the International Relief Union and to the organisations acting in its behalf, in accordance with the provisions of Article 5 of the present Convention and of the Statute, in all of their territories to which the present Convention applies, and in so far as is possible under the local law, the most extensive immunities, facilities and exemptions for

¹⁷ *Official Journal*, 1931, p. 1004.

¹⁸ The Opium Conventions of 1925 and 1931, concluded under League auspices, set up organs which were to be connected with, but technically independent of, the League — the Permanent Central Opium Board and the Drug Supervisory Body. The Board was appointed under a special procedure by the Council; the Supervisory Body by the League Advisory Committee on Traffic in Opium, the Permanent Central Opium Board, the League Health Committee, and the Office International d'Hygiène Publique.

Members of these bodies appear to have been considered by the Swiss authorities as not being covered by the *Modus Vivendi* or entitled to the privileges and immunities of League officials. The League authorities were apparently prepared to leave the question of their status to the appreciation of the governments concerned. The Secretary-General issued a League traveling certificate (*titre de voyage*) to the Vice President of the Board (who was also a member of the Supervisory Body) in order that he might "obtain such immunities, privileges and facilities as may properly be accorded him in virtue of (his) functions."

their establishments, for the movements of their staff and supplies, for relief operations and for the publicity of appeals.¹⁹

The restrictive clause "in so far as possible under the local law" was inserted at the instance of the British Government.²⁰

Commissions of Inquiry, etc. — Under this heading fall all commissions acting under a mandate from the League. These included not only "political" bodies such as the Aland Islands Commission of Rapporteurs (1920-1921), the Lytton Commission (1932-1933), the Chaco Commission (1933-1934), the Commission to verify the measures taken by the Spanish Government for the withdrawal of non-Spanish combatants from Spain (1938-1939), but also commissions sent out in connection with the work of the various technical organizations of the League. As a rule, no express provision with respect to the privileges and immunities to be enjoyed by them was inserted in the resolutions under which they were appointed. Such provision would indeed have been superfluous, since they were clearly covered by Article 7 of the Covenant. An interesting exception is to be found in the Rules defining the composition and functions of the Commissions of Investigation which it was proposed to set up in execution of the military, naval and air clauses of the Peace Treaties. A report adopted by the Council in December, 1920, provided that the personnel of these commissions should enjoy diplomatic privileges and immunities.²¹

The question came up again in 1924-1926. Proposals submitted by the Permanent Advisory Commission on Military, Naval, and Air Questions which were adopted by the Council in September, 1924, contained a clause (Chapter IV, g) granting the members of Investigation Commissions full diplomatic privileges and immunities.²² This provision was amplified in a later report of a Mixed Committee, composed of jurists and

¹⁹ *Official Journal*, 1927, p. 1001.

²¹ *Ibid.*, 1921, p. 29.

²⁰ *Ibid.*, 1926, p. 1208, and 1927, p. 241.

²² *Ibid.*, 1924, p. 1594.

representatives of the Permanent Advisory Commission, which contained the following passage:

Members of a Commission of Investigation shall enjoy full diplomatic privileges and immunities and shall be in possession, in addition to diplomatic passports, of identity certificates issued by the Secretary-General on behalf of the Council stating their official capacity. Such members shall furthermore have the right to complete freedom of movement in the discharge of their duties.²³

The Mixed Committee referred in this connection expressly to Article 7, paragraph 4, of the Covenant, as did the Council itself.²⁴ The proposed Commissions of Investigation never functioned.²⁵

Saar Plebiscite Organization. — Special provision for diplomatic privileges and immunities was made with respect to members of the plebiscite organization in the Saar Territory. The Council first granted these privileges and immunities to the members of the Plebiscite Commission and its Technical Adviser and to the members of the Supreme Plebiscite Tribunal and its Registrar.²⁶ By later resolution, at the request of the Plebiscite Commission, it extended the same prerogatives to the following persons:

The Secretary-General and Deputy Secretary-General of the Plebiscite Commission, and the district inspectors and assistant district inspectors appointed by the Plebiscite Commission;

The examining magistrate and the prosecutor attached to the Supreme Plebiscite Tribunal, the prosecutor's deputies, the district judges, and the registrar of the Prosecutions Department and the deputy registrar.²⁷

International Institutes placed at the disposal of the League. — These institutes were autonomous bodies juridically distinct from the League, but placed at its disposal by various govern-

²³ Chapter I, 6. *Official Journal*, 1925, p. 610.

²⁴ *Ibid.*, p. 147.

²⁵ The writer has been informed by M. V. Pastuhov that the identity certificates were printed but never issued.

²⁶ *Official Journal*, 1934, pp. 666-67.

²⁷ *Ibid.*, p. 1427.

ments, and their activities were integrated with certain activities of the League organs at Geneva.

The first to be created, which set the pattern for those established later, was the International Institute of Intellectual Cooperation in Paris. Article 11, paragraph 2, of its Organic Statute provides that:

The Governing Body shall determine, by a decision approved by the Council of the League of Nations, the classes of the personnel of the Institute which are to enjoy the diplomatic privileges and immunities provided for under Article 7 of the Covenant.²⁸

Article 19 of the Staff Regulations of 1925, which was duly approved by the Council, reads as follows:

Diplomatic privileges and immunities as provided for in Article 7 of the Covenant shall be enjoyed by the Director-General, Chiefs of Sections and of Services, and assistants.²⁹

After the reorganization of the Institute in 1930, new Staff Regulations were issued, Articles 27 and 28 of which, dealing with the question of immunities, read:

Article 27. Diplomatic privileges and immunities as provided for by Article VII of the Covenant of the League of Nations and recognised by Article 11 of the Organic Statute of the Institute shall be confined to officials of a grade at least equal to that of secretary.

The Director is instructed to conclude all the necessary agreements with the competent administrations with a view to ensuring for the persons entitled the full exercise of the diplomatic privileges and immunities, subject to the terms of Article 28 of the present Regulations.

Article 28. The diplomatic privileges and immunities provided for in Article 27 are conferred on officials in the interests of their functions. They do not exempt the officials who enjoy them from discharging their private obligations or from observing the laws and police regulations in force.

When they are obliged to claim the benefit of the said privileges and immunities, the officials of the Institute shall report the matter to the Director, who shall decide whether these privileges and im-

²⁸ *Official Journal*, 1925, p. 287.

²⁹ *Ibid.*, p. 1466.

munities shall be waived, subject to the Directors' Committee being informed at its next session.³⁰

The officials in fact generally enjoyed privileges similar to those accorded to members of the diplomatic corps in France. Special identity cards were issued to the higher officials by the Ministry of the Interior upon request by the Director of the Institute.³¹

The Internal Regulations of the International Institute for the Unification of Private Law at Rome (Article 15) provided that:

The higher officials of the Institute shall enjoy diplomatic privileges and immunities in accordance with the practice of the League of Nations (Article 7 of the Covenant).³²

Those of the International Educational Cinematographic Institute, Rome, contained an almost identical provision, which, however, added that:

The officials enjoying these immunities shall be the Director and the Heads of Section.³³

It may be mentioned finally that diplomatic status was contemplated for the officials of a projected International School of Advanced Health Studies to be set up in Paris and placed at the disposal of the League by the French Government. Article 11 of the Organic Statute of this institute read:

The School shall enjoy diplomatic privileges and immunities. The Governing Body shall determine, by a decision approved by the French Government, the classes of the personnel of the School who are to enjoy such diplomatic privileges and immunities.³⁴

³⁰ League of Nations, International Committee on Intellectual Co-operation, *Report of the Governing Body of the International Institute of Intellectual Co-operation* (L.N. publication 1931.XII.A.5.), p. 17.

³¹ After the outbreak of war in 1939, these cards lost their validity and the assimilation of Institute officials to diplomats broke down.

³² *Official Journal*, 1928, p. 1753.

³³ *Ibid.*, 1929, p. 165.

³⁴ *Ibid.*, 1930, p. 1616.

The problem of officials who were nationals of the countries in which the Institutes had their seats was not dealt with in a uniform manner. The French officials of the Institute of Intellectual Cooperation in Paris, for example, were refused fiscal exemption by the Ministry of Finance; the taxes paid by them on their salaries were refunded by the Institute in order that discrimination between the different members of the staff should be avoided. On the other hand, tax exemption in respect to their salaries was granted by the Italian Government to the Italian officials of the International Institute for the Unification of Private Law.³⁵

International Agents appointed by the Council under Special Agreements concluded outside the League. — We have mentioned in Chapter I that the fact that a person was appointed to some function by the Council or other League organ under a special treaty did not necessarily imply that he was to be considered as a League official and enjoy privileges under Article 7, paragraph 4. In April, 1920, during a discussion concerning the establishment of machinery for the protection of Greek minorities in Turkey, the Council ruled "that its collaboration . . . shall be limited to the nomination of the Members of (mixed) Commissions, and that these shall act under the control and responsibility of the High Contracting Powers."³⁶

The inescapable inference from this statement was drawn in a case brought against a member of one of those commissions (the Greco-Bulgarian Mixed Emigration Commission) in 1934, the Court of Appeal of Athens holding³⁷ that "Members of mixed commissions such as the present one did not exercise

³⁵ S. Basdevant, *Les fonctionnaires internationaux* (Paris: Librairie du Recueil Sirey, 1931), pp. 315-16. It is interesting to note, from the same source, that an Italian law of 1930 granted diplomatic immunities to the members of the General Assembly and Permanent Committee of the International Institute of Agriculture, as well as to Institute officials of the first and second category.

³⁶ *Official Journal*, 1920, pp. 412-13.

³⁷ Taken from report in *Annual Digest*, 1933-1934, p. 387.

their functions for and under the League of Nations; they performed independent duties. They could not be deemed to be agents of the League within the meaning of Article 7, paragraph 4, of the Covenant and could not, therefore, claim jurisdictional immunity under that article."

Certain international officials appointed by the Council under special conventions were granted diplomatic prerogatives by the texts creating their office. This was the case, for instance, for the presidents of the Mixed Commission and the Arbitral Tribunal for Upper Silesia³⁸ and for the president of the Permanent Technical Hydraulic System Commission of the Danube.³⁹

3. *Status in the Territories of Non-Member States*

Whenever League officials had to carry out a mission in a non-member state, the League authorities endeavored to insure that they would enjoy a suitable status within that state. The same is true whenever an important mission had to travel through the territory of a non-member state.

The visit of the Mosul Commission of Enquiry to Angora (Ankara) at the end of 1924 was a case in point, Turkey not being then a member of the League. Again, when the Commission of Inquiry into the Control of Opium Smoking in the Far East carried out an investigation in the Philippines in 1930, it was accorded diplomatic privileges, including freedom from customs examination.⁴⁰

The general attitude of the United States was first laid down in connection with a case that arose in 1927.⁴¹ An official of the

³⁸ German-Polish Convention of May 15, 1922: Martens, *Nouveau Recueil Général* (3^e Série), Vol. 16, p. 854.

³⁹ Regulations adopted May 25, 1943: Manley O. Hudson, *International Legislation; A Collection of the Texts of Multipartite International Instruments of General Interest, Beginning with the Covenant of the League of Nations* (Washington: Carnegie Endowment for International Peace, 1931-), Vol. II, p. 1026.

⁴⁰ Information supplied by Dr. Leon Steinig of the Drug Control Section of the League of Nations Secretariat.

⁴¹ *Foreign Relations of the United States, 1927*, Vol. I (1942), p. 413.

International Labor Office, a British subject, who was on his way to Australia on leave was arrested and fined in California for a disturbance of the peace. The British Embassy at Washington, D. C., asked the State Department for its views as to what privileges officials of the League of Nations are entitled to in the United States. The following opinion was given in reply:

. . . under customary International Law diplomatic privileges and immunities are only conferred upon a well defined class of persons, namely those who are sent by one State to another on diplomatic missions. Officials of the League of Nations are not, as such, considered by the Department to be entitled to such privileges and immunities under generally accepted principles of International Law but only under special provisions of the Covenant of the League which can have no force in countries not members of the League.

In the estimation of this Department the executive authorities of this Government would not be warranted, under our law which is declaratory of International Law, in according to officials of the League of Nations diplomatic privileges and immunities in the United States since such persons are not comprehended in the definition of diplomatic officers contained in our Statutes.

I may add that such an official would customarily be given a diplomatic visa on the basis of his diplomatic passport and accorded the courtesies usually extended to holders of such passports. You will appreciate the fact, however, that no assurance can be given that such a visa would be regarded as entitling the holder to the privileges and immunities of a diplomatic officer provided for in the laws of the United States.⁴²

This attitude was confirmed in a letter of October 16, 1933, from the Under Secretary of State to the Turkish Ambassador, which contains the following passages:

Under customary international law, diplomatic privileges and immunities are only conferred upon a well-defined class of persons, namely, those who are sent by one state to another on diplomatic missions. Officials of the League of Nations are not as such considered by this Government to be entitled while in the United States

⁴² *Foreign Relations of the United States*, 1927, Vol. I (1942), p. 414.

to such privileges and immunities under generally accepted principles of international law, but only under special provisions of the Covenant of the League which have no force in countries not members of the League.

It is believed that the authorities of this Government would not be warranted under our law which is declaratory of international law, in according to agents of the League of Nations diplomatic immunities in the United States since such agents are not comprehended in our statutes . . .

Customs courtesies and free entry privileges are granted to League officials en route through the United States and measures for their protection are afforded if requested.⁴³

Facilities in regard to customs and other formalities were in fact granted to the Commission of Inquiry into the Sino-Japanese Dispute (Lytton Commission) and its staff when they traveled across the United States *en route* to the Far East in 1932.

The basic practice of the United States was not modified after it became a member of the International Labor Organization in 1934. The officials of the office set up in Washington, D. C., have never enjoyed tax exemption. Their position has in fact been very similar to that of the parts of the League Secretariat (the Mission of the Economic, Financial, and Transit Department at Princeton, New Jersey, the staff of the Permanent Central Opium Board and of the Drug Supervisory Body at Washington, and the Officer in Charge of the Health Services of the League, also in Washington) which have been working in the United States in recent years.

The difficulties in the way of granting diplomatic status to League officials in the United States have derived mainly from the provisions of domestic law brought out in the communications from the State Department referred to above.⁴⁴ Consider-

⁴³ Green Hackworth, *Digest of International Law* (Washington: Government Printing Office, 1940-44), Vol. IV, p. 422.

⁴⁴ The same statutory difficulty had arisen in 1920 in connection with a proposal to grant diplomatic privileges to members of the Reparation Commission. Hackworth, *op. cit.*, p. 421. Officials of the Pan American Union have never been granted diplomatic status in the United States.

ations of another order explain the difficulties that arose in the early years of the League's existence in connection with the status of League officials sent to Soviet Russia. When in March, 1920, the League Council, in response to an invitation from the Supreme Council of the Allies, contemplated sending a Commission of Investigation to Russia, the Soviet authorities were asked whether they would be prepared —

to give this Commission the right of free entry and return, and to make arrangements for ensuring to the Commission complete liberty of movement, communication and investigation, and to guarantee the absolute immunity and dignity of its members and the inviolability of their correspondence, archives and effects.⁴⁵

In its reply, the Central Executive Committee of the Soviets declared "that it consents, in principle, to the visit of the Delegation of the League of Nations, and that on Soviet Russian Territory they will be given the same liberty for studying the situation as is enjoyed by the representatives of other Powers within the boundaries of a Sovereign State."⁴⁶ But if put forward conditions which, in the opinion of the Council,⁴⁷ practically amounted to a refusal and the whole project was in the end abandoned.

When Dr. Nansen went to Moscow in 1920 as League High Commissioner for the Repatriation of Prisoners of War⁴⁸ and some years later to the Soviet Republic of Erivan as the head of a League Commission,⁴⁹ he was officially received as a private individual only. The Soviet authorities were, on the other hand, willing to make concessions in regard to the status of League officials when the question arose in 1922 of extend-

⁴⁵ *Procès-Verbal of the Third Session of the Council of the League of Nations, Held in Paris on 12th and 13th March, 1920*, p. 23.

⁴⁶ *Procès-Verbal of the Fifth Session of the Council of the League of Nations, Held in Rome from 14th to 19th May, 1920*, p. 113.

⁴⁷ *Ibid.*, p. 119.

⁴⁸ J. H. Whitehouse, *Nansen; A Book of Homage* (Hodder, 1930), p. 160, quoted in K. W. Davis, *The Soviets at Geneva; The U.S.S.R. at the League of Nations, 1919-1933* (Geneva: Librairie Kundig, 1934), p. 29.

⁴⁹ Davis, *op. cit.*, p. 40.

ing the work of the League Health Organization⁵⁰ to Soviet territory and setting up offices in Moscow and Kiev. To quote the report submitted to the Health Committee on August 14, 1922, by Dr. Ludwik Rajchman, the League Medical Director:

[The plan] implied work on Russian and Ukrainian territory, at least within the western frontier zone and at the Black Sea ports. It was then obviously indispensable to secure, on the one hand, the full co-operation of the Russian and Ukrainian health authorities and, on the other, the necessary privileges and immunities for our representatives and agents of the Commission in Russia. The Chief Epidemic Commissioner accordingly negotiated, at Genoa, and signed an agreement with Messrs. Litvinoff and Rakowsky, representing the Soviet Governments of Russia and the Ukraine respectively. Copies of this document were circulated to all the members of the Health Committee as soon as the Council had taken official cognizance of it.⁵¹

The agreement, which was based on an existing arrangement between the French Red Cross Society and the Soviet authorities,⁵² included provision for immunities for the commissioners, their families, and their correspondence as well as for tax exemption.⁵³

One non-member state placed an International Institute at the disposal of the League under the same conditions as applied in the case of the Institutes in Paris and Rome mentioned in the first part of this chapter. In 1931, the Brazilian Government offered the League an International Centre for Research on Leprosy, which was subsequently set up at Rio de Janeiro. Article 10, paragraph 2, of the Organic Statute of the Centre provides that:

⁵⁰ Technically, the work done in Russia was under the supervision not of the League Health Committee as such but of an International Commission comprising the members of the Health Committee and a representative of the Central Russian Health Services.

⁵¹ League of Nations, Health Committee: *Minutes of the Fourth Session, Held at Geneva, August 14th to 21st, 1922* (L.N. document C.555.M.337.1922.III.), p. 47.

⁵² *Official Journal*, 1922, p. 697.

⁵³ H. van Blankenstein, *L'Organisation d'hygiène de la Société des Nations, Etudes juridiques* (Leiden: Purmerend, 1934), p. 239, n. 3.

The Centre shall enjoy diplomatic privileges and immunities. The Governing Body shall decide, with the approval of the Brazilian Government, which members of the staff of the Centre shall enjoy the said privileges and immunities.⁵⁴

⁵⁴ *Official Journal*, 1931, p. 2087.

CHAPTER VI

STATUS OF LEAGUE OFFICIALS IN THEIR HOME COUNTRIES

The question whether Article 7 of the Covenant grants immunities to League officials in their home countries has been of practical importance mainly as regards (1) immunities from jurisdiction and (2) exemption from income tax on League salaries.¹ The question of exemption from compulsory military service or special privileges relating thereto may be considered in the same connection.

1. Immunity from Jurisdiction

In his circular of 1922, the Secretary-General wrote that the immunity from jurisdiction in Switzerland "does not preclude the lodging of a complaint with the official's national authorities should such action appear desirable, although it is of course always understood that the officials of the League of Nations are not in any way responsible, as regards their duties, to any national government."² In this statement it is recognized that subjection to the jurisdiction of the home country, which may seem natural in the case of diplomatic agents, has a different aspect in the case of League officials. Indeed the principle laid down in Article 7 clearly implies that jurisdiction over officials in all member states should be restricted in the interests of the League. It is no less clear, on the other hand, that national courts should not be prevented from acting when those interests are not involved.³

¹ The question of travel facilities granted by member states to their own nationals employed by the League will be dealt with in Chapter VII.

² See Appendix I to Annexes I and II, below.

³ In a private law suit brought in France against the second Secretary-General, a Paris Court of First Instance overruled the defendant's claim that he was entirely

2. *Tax Exemption on League Salaries*

We have shown in Chapter II why the question of tax exemption is of especial importance in the case of international officials. The problem could clearly not be solved with respect merely to the countries in which officials were employed, a fact which explains why, in this case, exemption was claimed for League officials in all countries.

(a) *Secretariat and International Labor Office.* — In compiling the scale of salaries for League officials, the fact that salaries were free from income tax was taken into consideration.⁴ This exemption from income taxation on League salaries was, however, not quite universal. The Noblemaire Report, which was approved by the Second Assembly in 1921, called attention to the existence of certain exceptions and proposed that the governments concerned should be approached.⁵ The following year the Commission of Control (Supervisory Commission) asked whether this step had been taken and, if so, with what result. It felt "bound to call the attention of the Assembly to a situation which evidently requires its consideration."⁶ Nothing is reported regarding further action in this matter; such would presumably not be the case had the difficulties persisted.

The number of states which, in these early years, levied income taxation on League officials' salaries was very small. During the negotiations with the Swiss authorities early in 1921, the Legal Adviser of the Secretariat had only referred to one government, that of the United States. Although the

exempt from jurisdiction in all states members of the League. *Annual Digest*, 1935-1937, p. 395.

⁴ League of Nations, *Records of the Third Assembly, Meetings of the Committees, Minutes of the Fourth Committee* (Geneva, 1922), statement by the Secretary-General, p. 58.

⁵ League of Nations, *The Records of the Second Assembly, Meetings of the Committees*, Vol. II, p. 185.

⁶ "First Report of the Commission of Control," in Third Assembly, *Minutes of the Fourth Committee*, *op. cit.*, p. 129.

United States was not a member of the League, several United States citizens were employed as League officials. Speaking of the situation existing later in the same year, the Secretary-General mentioned difficulties with "one or two Governments." He added that the resolution of the Second Assembly had been adopted "in order to induce those Governments to follow the example of the other Governments."⁷ One country at least (Belgium) exempted its citizens in League service on the basis of these representations.

In the negotiations on the question of tax exemption of Swiss officials, undertaken in 1925-26, the Swiss authorities argued that the fact that the Second Assembly had *recommended* governments to grant tax exemption to League officials confirmed their view that no *obligation* in this respect lay on members of the League under Article 7 of the Covenant. But many "recommendations" of the Council and the Assembly have had no other object than to obtain respect for obligations generally recognized as imposed by the Covenant. Furthermore, it may be doubted whether definite conclusions can be drawn from the phrasing of the various reports to which we have referred, especially in view of the fact that a non-member state was concerned which was not legally bound by the provisions of the Covenant. This fact excluded the possibility of doing more than issuing a recommendation. The Noblemaire Report expressly referred in this matter to the diplomatic prerogatives enjoyed by League officials under the Covenant. Tax exemption of League salaries in all member states was assumed to be included in those prerogatives and — since the United States was involved — it was hoped that non-members would take the special status of officials into consideration.

⁷ Third Assembly, *Minutes of the Fourth Committee, op. cit.*, p. 58. In later years, United States Revenue Laws were modified in such a way that League officials of United States nationality residing in Geneva could claim tax exemption on their League salaries. They were in the same position as any United States citizen residing abroad for a certain period of the year in respect to income derived from a source outside the United States.

(b) *Permanent Court of International Justice*. — In its report on the salaries of the members of the Court, the Third Committee of the First Assembly proposed that in order to equalize the position of all the judges their salaries should be exempted from taxation in every country. The decision was reached that in cases where judges had to pay taxes on their salaries they should be reimbursed by the League.⁸ It was never necessary to apply this rule, which, however, on one or two occasions gave rise to negotiations.⁹ The practice was confirmed in the amended Statute of the Permanent Court, which entered into force on February 1, 1936. Article 32, paragraph 8, of this Statute provide that the salaries, indemnities, and allowances of the judges and the registrar "shall be free of all taxation." The Assembly in 1930 had in fact adopted a resolution to the same effect.¹⁰

3. *Military Service*

This is a question, like that of tax exemption, which does not arise in connection with the immunities enjoyed by ordinary diplomatic agents.

There was no uniformity in the attitude taken by member states with a system of compulsory military service towards the question of granting deferments or exemptions in favor of their nationals in the League Secretariat, the I.L.O. and the Court Registry. But in peacetime most governments were prepared to arrange for deferments, etc., for the officials concerned, and in fact no disturbance in the work of the League arose on account of officials being called away for military reasons.

At the time of general mobilization, the position was of

⁸ First Assembly, *Plenary Meetings*, *op. cit.*, p. 748.

⁹ Hammarskjöld, *op. cit.*, p. 177.

¹⁰ *Records of the Eleventh Ordinary Session of the Assembly, Plenary Meetings, Text of the Debates* (Geneva, 1930); *Official Journal*, Special Supplement No. 84, p. 133.

course different. Men subject to military service resident abroad normally had a period of deferment in any case. But some governments made express provision for League officials. For example, special deferment arrangements were made for Swedish officials; Norwegians were exempted; certain key French officials were individually deferred; in the Netherlands mobilization exemption decree of April 18, 1939, exemption from mobilization in case of war, danger of war, and other emergencies was granted to "persons employed by or connected with a Netherlands Legation or Consulate, or employed by the Secretariat of the League of Nations."

In reply to a questionnaire sent by the International Labor Organization to its members in March, 1939, it appears that several states gave undertakings either not to mobilize their nationals in the International Labor Office or to exempt those whom the Director wished to retain.¹¹

¹¹ C. J. Hambro, *How to Win the Peace* (Philadelphia, New York: J. B. Lippincott Company, 1942), p. 246. The states whose replies in this sense are cited, were Canada, the United Kingdom, Ireland, Lithuania, Norway, and Switzerland.

CHAPTER VII

TRAVEL FACILITIES FOR LEAGUE OFFICIALS

1. *Passports and Visas*

In view of the world-wide activities of the League of Nations, it has obviously been of the greatest importance that its agents should be able to travel as freely and expeditiously as possible from one country to another in the performance of their duties. On the basis of Article 7, paragraph 4, they have been regarded as entitled to the same facilities as diplomats enjoy.

The following resolution was adopted by the Assembly on December 15, 1920:

The Secretary-General of the League of Nations shall deliver to Members of the Secretariat and officials of the League an identity card certifying the identity of the holder and the nature of his official duties. On presentation of this card, and at the request of the Secretary-General, the Government of which the holder is a national shall deliver or cause to be delivered by any of its diplomatic representatives, or by its consular agent at Geneva, a diplomatic passport permitting the official to carry out the mission with which he is entrusted with the benefit of all privileges and immunities provided for in Article 7 of the Covenant, and valid for the duration of such mission in the limits indicated by the Secretary-General.

Diplomatic visas will be given gratuitously — whenever necessary — on the request of the Secretary-General of the League of Nations by the diplomatic or consular agents of the Powers in whose territory the official will be travelling in accomplishment of his mission.¹

Facilities for members of League Committees were the subject of a resolution adopted the following year by the Second Assembly:

The Assembly proposes that the Members of the League of Nations should grant to the members of the various committees of

¹ First Assembly, *Plenary Meetings, op. cit.*, pp. 557-58.

the League, during their period of office, every possible facility in the matter of passports, particularly with regard to the regulations affecting visas and the period of their validity.²

The question of free visas and passports was raised in the Fourth Committee of the Third Assembly (1922), which "authorized the Secretary-General to communicate to those countries which have not yet granted free visas and passports required by the League's officials the earnest hope expressed by Members of the Committee that these officials will in future receive more favourable treatment."³

In fact, the large majority of member states issue diplomatic passports to their nationals who are first-category officials of the Secretariat or the International Labor Office, or higher officials of the Court. Some have issued such passports to all their nationals in these institutions irrespective of categories. A few states having a category of passport intermediate between the diplomatic and the ordinary have issued papers of this kind ("official" or "special" passports) to League officials. In the case of the United Kingdom, which has abolished diplomatic passports,⁴ passports are issued to League officials free of charge.

Naturally enough, it has often not occurred to members of League committees and commissions to ask for anything other than ordinary passports for the purpose of proceeding from their country to meetings in Geneva or elsewhere. So far as the question has arisen, however, the practice has depended in the first place upon the status of the persons concerned within their own country. In many cases this status entitled them to diplomatic or official passports. In other cases the

² Second Assembly, *Plenary Meetings* (Geneva, 1921), p. 331.

³ Third Assembly, *Plenary Meetings*, Vol. II (Geneva, 1922), p. 220.

⁴ Cf. British reply in League of Nations, Advisory and Technical Committee for Communications and Transit, *Replies of the Governments to the Enquiry on the Application of the Resolutions Relating to Passports, Customs Formalities and Through Tickets*, Geneva, 1922 (L.N. document C.183.M.101.1922.VIII.), p. 14: "No diplomatic passports will be issued in the future by the British authorities."

decision whether or not a diplomatic passport was issued seems to have been generally based — within the limits fixed by national laws and regulations, which varied widely from one country to another — on an appreciation of the importance of the functions to be performed and of the consideration to which the person was entitled.

The American Under Secretary-General appointed in 1919, when it was assumed that the United States would be a member of the League, was given a diplomatic passport. Since then, however, the United States has never granted such passports to officials of the League Secretariat or to other persons engaged on League business (committee members, etc.), except in cases where such persons have been diplomats or were considered to be entitled in their own right to special courtesies. A diplomatic passport was denied to an American judge of the Permanent Court on the ground that the United States was not a member of the Court.⁵ He was granted instead, like most of the United States citizens in higher positions in the League institutions,⁶ a so-called "special" passport which is issued to persons who, while not representing the United States or belonging to the Foreign Service, are engaged on important official business abroad. The United States practice has been summarized as follows:

With respect to the general question of special passports for Americans serving on the League of Nations Secretariat, it may be said that special passports may be issued to persons on League of Nations business when the Department has some special interest in their work; and it will be presumed that any American in the League Secretariat with the rank of Member of Section or higher is performing work of that character, though the presumption will be subject to rebuttal in any specific case. In this connection it will be pointed out that the issue of special passports is determined by the Department with respect to its own interests and special passports are not issued to persons as a matter of right.⁶

⁵ Hackworth, *Digest of International Law, op. cit.*, Vol. III, p. 455.

⁶ The Department of State to the Consul at Geneva, July 24, 1934, quoted in Hackworth, *ibid.*, pp. 449-50.

Diplomatic visas are as a rule given on diplomatic passports. In the case of League officials, such visas are also given on ordinary passports. It may be mentioned that even states in which the institution of diplomatic passport does not exist issue diplomatic visas. The United Kingdom does so in the case of League officials, and indeed expressly authorized the British Consul at Geneva to issue diplomatic visas "for the special convenience of League officials and representatives."⁷ Diplomatic visas are granted also by non-member states to League officials who hold a diplomatic passport. For the United States, this practice was confirmed by the statement made by the State Department in 1927 which has been quoted in Chapter V. In the same chapter we mentioned another communication from the State Department according to which free entry privileges are granted to League officials *en route* through the United States. Certain officials of the League Secretariat transferred to the United States in 1940-41 were given diplomatic visas irrespective of the type of passport they held.

It seems that the rule that diplomatic passports and visas are free has been normally but not universally applied.

2. *Question of a League Passport*

It was clear from the outset that the assimilation of League officials to diplomatic agents for the purpose of passports and visas was attended by certain disadvantages which would be

In the case of American citizens proceeding abroad in behalf of the International Labor Organization, a test similar to that applied in the case of League of Nations officials is used in determining whether they are entitled to special passports, that is, to be entitled to such a passport they must have the rank of chief of section, or higher, in the International Labor Office. All delegates on behalf of the United States to the meeting of the Governing Body of the International Labor Organization, including government, employers', and employees' representatives, are granted special passports. Special passports have also been issued to the director of the Washington Branch of the International Labor Office for the purpose of travel abroad in the performance of his official duties.

⁷ Statement by the British representative at the Passport Conference of 1926. L. N. Document C.423.M.156.1926.VIII, p. 63.

overcome by the introduction of a special League passport. In September, 1920, the Secretary-General suggested to the Ninth Session of the Council that a body of experts should be requested to study "the practical steps which should be taken to enable persons employed by the League to take advantage of the facilities provided for by Article 7 of the Covenant, especially as regards journeys undertaken by them."⁸ The following month the question was discussed at the Conference on Passports, Customs Formalities, and Through Tickets. The Conference associated itself with the Secretary-General's views and made the following proposal:

. . . in order to assist the members of the Secretariat and the agents of the League of Nations in the exercise of their duties of an international nature under the conditions provided for by Article 7 of the Covenant, the Secretary-General of the League of Nations should request the delegations of the Members of the League to grant to the Members of the Secretariat and agents of the League, passports of a special type.

These passports would be valid without visa in the territories of all the States Members of the League. Powers other than those Members of the League would be invited to give these passports the benefit of a diplomatic visa. The Secretary-General of the League of Nations would be responsible for the granting of these passports and for their recovery from the holders as soon as the latter ceased to be entitled to them.

Permanent passports would be granted by the Secretary-General to the permanent personnel of the League, and passports valid for the duration of their duties only to the personnel attached only temporarily to the Secretariat.

A list of the names of holders of passports granted or withdrawn would be sent periodically by the Secretary-General to all the Governments.

The Secretary-General, in granting such passports, would obtain guarantees as to the identity of their holders in agreement with the authorities of the countries of which the holders are subjects, as well as with the Swiss authorities.⁹

⁸ *Procès-Verbal of the Ninth Session of the Council of the League of Nations, Held in Paris from 16th to 20th September, 1920*, p. 113.

⁹ *Procès-Verbal of the Tenth Session of the Council, Held in Brussels, 20th October, 1920-28th October, 1920*, p. 279.

The Council referred the matter to the Assembly, whose Second Committee set out the arguments of the Secretary-General in the following terms:

This Article (Article 7 of the Covenant) lays down that officials of the League of Nations shall enjoy diplomatic immunities and seems to imply that the officials of the League should hold passports of a diplomatic character.

The Secretary-General pointed out that the issue, in the usual form, of diplomatic passports by the various States to officials of the League is attended by serious disadvantages, both of a practical and a general nature.

From a practical point of view, the necessity for officials of the League, who often have to undertake at short notice journeys to different countries on special missions with which they are entrusted, to obtain a diplomatic visa on every occasion, would have a detrimental effect upon the normal working of the Secretariat, and especially now, since the League of Nations has been installed at Geneva.

On the other hand, it would be contrary to the spirit of a purely international institution such as the Secretariat of the League of Nations if the fact that these officials were entrusted with missions of an international character should imply the consent — in the form of passports — of the States to which the members belonged.¹⁰

For the following reasons, however, the Committee did not feel able to adopt the scheme proposed:

While there is no doubt that Article 7 of the Covenant grants to officials of the League the enjoyment of diplomatic privileges and immunities during the discharge of their duties, nevertheless the proposed formula, if it were not modified, would give rise to difficulties of a legal and practical nature.

From the legal point of view the issue of a passport is an administrative act, an act of sovereignty and authority. Now, it is evident that the League of Nations is not a State possessing sovereignty of its own, as it is obvious that there can be no "national" of the Secretary-General.

On the other hand, it is not possible for States to delegate one of their rights of sovereignty to the Secretary-General by means of a resolution passed by the Assembly; this would necessitate a new

¹⁰ First Assembly, *Plenary Meetings, op. cit.*, p. 556.

international agreement, which would have to be submitted for ratification by the Governments concerned.¹¹

The Assembly endorsed this view and proceeded to adopt the resolution quoted at the beginning of the chapter.

3. *Lettres de Mission*

The idea of a League passport was thus defeated. It came up, however, in a different form some years later. The Secretary-General was in the practice of supplying League officials going on mission with a document certifying their status. This document, known as a *lettre de mission*¹² was taken as the basis for a proposal further to facilitate official traveling by League agents. A note was submitted at the Passport Conference in 1926 by its Secretary-General (M. Haas) which may be quoted *in extenso*:

The Council of the League of Nations has decided on various occasions that, in order to allow persons sent on a mission on behalf of the League of Nations to claim this status during their mission, the Secretary-General of the League should supply them with a document which at present takes the form of a "lettre de mission."

In this connection it should be pointed out that in many cases such missions, particularly when they are in relation to the articles of the Covenant concerning threatened breaches of the peace, are of great urgency. At present, owing to the formality of passport visas, which when the person leaves Geneva is usually carried out at Berne (diplomatic visa), the departure of persons on missions of this kind may be delayed to an extent which may be somewhat serious if the events giving rise to the departure of the mission occur on a Saturday afternoon.

¹¹ First Assembly, *Plenary Meetings*, *op. cit.*, p. 557.

¹² The text which has been used for many years is as follows: "I, the undersigned, Secretary-General of the League of Nations, hereby communicate and certify to all High Authorities concerned that . . . is an Official of the League of Nations within the meaning of Article 7 of the Covenant of the League of Nations and, in accordance with the said article, is entitled when engaged on the business of the League, to enjoy diplomatic privileges and immunities.

"The present *Lettre de Mission* is valid until . . ."

The Conference, or a small committee of experts appointed by it, might perhaps examine the form in which these "lettres de mission" are drawn up, and, while indicating any changes which may appear desirable, might consider whether a recommendation could not be made to the various Governments in order that, in urgent cases, persons carrying these "lettres de mission" and also provided with their ordinary passports may at least provisionally be exempted from the formality of a visa.

Such a measure would facilitate the discharge of the missions entrusted to the League of Nations. On the occasion of a threatened breach of the peace last year, the Council of the League strongly emphasized in the report which it adopted the great importance of rapidity of action on the part of the League's machinery in grave crises.¹³

These proposals were amplified at the opening of the discussion on this point. Extremely urgent cases might occur, M. Haas stated, especially where there was danger of a breach of the peace, and delays of any kind might be serious. In such cases, he suggested, might not persons carrying *lettres de mission* signed by the Secretary-General and containing the name and photograph of the holder be provisionally exempted from the formality of a visa, provided they also carried their ordinary passports?

The following statements made in the course of the ensuing discussion are worth noting:

The Hungarian representative pointed out that Hungary had always allowed persons traveling on urgent business to enter the country without a visa and even without a passport, particularly persons carrying credentials of an international character.

The Yugoslav representative said that in practice it would be advisable to obtain a letter from the Consul at Geneva,

¹³ L.N. document C.423.M.156.1926.VIII, pp. 161-62.

The "threatened breach of the peace" referred to in the Council's report was that which had arisen in connection with the Greco-Bulgarian dispute of 1925. Actual fighting had in fact been arrested as a result of the Council's prompt intervention.

so that the person sent on the mission would have in his possession a document drafted in the language of the country.

The French representative felt sure that the French Government would grant all facilities to enable persons on missions to be admitted to the country on presenting their *lettres de mission*, or would instruct its consuls that a special visa should be stamped thereon.¹⁴

The following recommendation was finally adopted and inserted in the Final Act of the Conference:

In order to facilitate the rapid movement of missions under the authority of the League of Nations, the Conference recommends that, in urgent cases when it would not be possible to obtain the regular visas, persons in possession of the necessary papers issued by the Secretary-General of the League and also provided with regular passports, should be enabled by the countries of destination or transit to fulfil their duties without delay. In such cases the Secretary-General will immediately notify the Governments concerned.¹⁵

In their replies to the Secretary-General's request for observations on recommendations of the Conference, several governments referred to the matter of visas for League officials. The only express refusal by a member state to accept the recommendation came from the Polish Government.¹⁶ The Japanese Government, which at first replied favorably to the recommendations of the Conference,¹⁷ changed its attitude after Japan's withdrawal from the League.¹⁸ The Swiss Government replied as follows:

The conditions mentioned in the recommendation as likely to facilitate rapid travel by League missions are already fulfilled in

¹⁴ L.N. document C.423.M.156.1926.VIII, p. 64.

¹⁵ *Ibid.*, p. 166.

¹⁶ *Official Journal*, 1929, p. 311.

¹⁷ *Ibid.*, 1928, p. 1981.

¹⁸ League of Nations, Advisory and Technical Committee for Communications and Transit, *Passport System; Replies from Governments to the Enquiry on the Application of the Recommendations of the Passport Conference of 1926* (L.N. publication 1937.VIII.4), p. 51.

Switzerland, as a result of the general instructions issued to frontier-posts concerning the inspection of passports.

A transit-visa may be given by frontier-posts to any person holding a proper passport, provided there be no doubt that on leaving Switzerland he will enter the country to which he is proceeding. The entrance visa is also given at the frontier when urgent reason is shown.

On receipt of a notice from the Secretary-General to the Federal authorities, the latter will immediately issue all necessary instruction to enable agents of the League of Nations requiring a visa to enter Switzerland or cross her territory without difficulty.¹⁹

Apart from the *lettre de mission* reserved for officials of the Secretariat and the International Labor Office, there was the *titre de voyage* issued to other League agents for the same purpose.

The practical value of the *lettre de mission* varied not a little with the varying prestige and authority of the League. During the heyday of the League's political prestige, this document was used on occasion as a real League passport.²⁰

4. *Customs and Transportation Facilities*

Any person bearing a diplomatic passport in practice enjoys courtesies and facilities in regard to customs formalities. League officials provided with such passports naturally enjoy this advantage. As a further guarantee that full facilities and courtesies should be granted at the frontier, the diplomatic agents of some governments have at times issued special *recommandations de frontière* to League officials traveling in their official capacity. According to the State Department communication of 1933 quoted in Chapter V,²¹ the United

¹⁹ *Official Journal*, 1929, p. 1302.

²⁰ Dr. Ludwik Rajchman, former Director of the Health Section of the League of Nations Secretariat, has told the writer of long journeys accomplished on behalf of the League, during which he showed no travel document other than his *lettre de mission*, bearing diplomatic visas from the countries visited.

²¹ Above, pp. 71-72

States was prepared to grant customs facilities to League officials *en route* through that country.

Some reference to the Assembly resolution of September 30, 1930,²² should not be omitted. This resolution concerns "Communications of Importance to the League of Nations at Times of Emergency" and envisages facilities to be granted to aircraft and motor vehicles. The aircraft and motor vehicles effecting transport of importance to the working of the League are defined as those "used to convey agents of the League or persons entrusted by the League with a special mission, or League correspondence, or official representatives of States Members of the League, or delegations to the Council, Assemblies and Conferences of the League, and the correspondence of such representatives or delegations." The motor vehicles were to bear "a distinctive identification mark, either a plate marked 'S.D.N.'²³ or a flag" and the driver and persons conveyed were to be in possession of "official documents indicating their status and mission." The Secretary-General conducted negotiations on the subject with member states, a large number of which agreed to grant the required facilities.

Such facilities were in fact given by the French authorities in 1940 when part of the archives of the Secretariat and the International Labor Office, and the personal effects of the nucleus of officials whose services were being retained, were moved to France and later back to Geneva. The transportation was effected in cars and trucks belonging to the League, bearing the S.D.N. plate.

The League was granted by a large number of shipping companies and airlines the reductions and facilities normally accorded to national governments in respect of official travel by their diplomatic representatives. In 1933, however, the League Supervisory Commission called attention to the fact

²² Eleventh Assembly, *Plenary Meetings*, *op. cit.*, pp. 160 *et seq.*

²³ Standing for Société des Nations.

that certain shipping companies did not follow this practice and "in view of the regrettable effects of this discrimination on the finances of the League," asked the Secretary-General to "take such steps as might seem likely to improve the position."²⁴

²⁴ *Records of the Fourteenth Ordinary Session of the Assembly, Meetings of the Committees, Minutes of the Fourth Committee (Budget and Financial Questions), Official Journal, Special Supplement No. 118, p. 121.*

CHAPTER VIII

STATUS OF OFFICIALS OF THE INTERNATIONAL LABOR OFFICE IN CANADA

1. *The Order in Council of 1941*

When a nucleus of the staff of the International Labor Office was transferred from Geneva to Montreal in 1940, an arrangement defining in certain respects the status of the Office and its staff in Canada had to be worked out. This arrangement was embodied in a Canadian Order in Council of August 14, 1941.¹

The Order recognizes "that by Article 7 of the Covenant of the League of Nations and Article 6 of the Constitution of the International Labour Organisation, the International Labour Office, as part of the organisation of the League enjoys diplomatic privileges and immunities." It grants to "members of the international administrative staff" of the Office immunity from civil and criminal jurisdiction, subject to waiver by the Director. Other members of the staff enjoy this immunity "in respect of acts performed by them in their official capacity and within the limits of their functions," likewise subject to waiver by the Director. These other members are expressly made subject to the jurisdiction of the Canadian courts in respect of acts performed in their private capacity. Salaries paid by the Office to the permanent members of its staff are exempted from "all direct taxes imposed by the Parliament or Government of Canada, such as income tax and National Defence Tax," this exemption not applying to persons holding contracts for less than one year.

¹ Treaties of Peace (Status of the International Labour Office) Order, 1941. Reproduced in Annex IV, below.

2. Comparison with the Swiss and Netherlands Agreements

In one very important respect, the regime laid down in the Canadian Order in Council differs from those resulting from the agreements made with the Swiss and Netherlands Governments in the nineteen-twenties. No distinction is made between officials on the grounds of nationality; Canadian officials of the International Labor Office enjoy in Canada the same privileges and immunities as officials from other countries. It should be noted, too, that, as regards the scope of the immunities accorded, no attempt has been made to assimilate officials to corresponding categories in the diplomatic corps, a purely functional distinction being drawn between "members of the international administrative staff" and "other members of the Staff."

In matters for which no provision has been made in the Order in Council (for example, customs facilities), officials of the Office are in general placed on the same footing as members of the diplomatic corps at Ottawa. Steps have been taken to insure that the officials may enter and leave Canada freely in the discharge of their duties. Higher officials are granted permanent diplomatic visas, irrespective of the type of passport they hold, and other officials permanent special visas, which are valid so long as the officials retain in Canada their positions on the staff.

Chapter III has shown with what care the League authorities in Switzerland endeavored to prevent abuse by officials of their immunities or behavior that might give rise to public criticism. Upon the announcement of the Canadian Order in Council, the officials of the International Labor Office in Montreal were reminded that the General Instructions of 1936 relating to the Immunities of Members of the Staff remained in force in so far as applicable under the changed circumstances. Their particular attention was called to the general

principles set forth in those Instructions, the opening sentences of which contain the essence of the whole system which has been analyzed in this study:

The immunities conferred on officials of the International Labour Office have not been instituted for the furtherance of the personal interests and convenience of these officials. They are intended only to secure, in all circumstances, the free working of the international organisations and the complete independence of their agents.

CHAPTER IX

CONCLUSIONS FROM LEAGUE OF NATIONS EXPERIENCE¹

The preceding chapters have brought together available evidence concerning the character and practical functioning of the system of privileges and immunities that covers what has been until very recently by far the largest and most important body of international officials, namely those serving in the complex of League of Nations organizations. It may be useful in this final chapter to consider what are the principal lessons to be drawn from this League experience.

The grant of *diplomatic* privileges and immunities to League officials made it possible to apply to them from the outset a body of existing law and practice covering most of the essential requirements of an international service. Except in a few isolated cases, the Covenant obligations have been well respected by all states members of the League, and the regime has worked, on the whole, with little difficulty or friction, both in the countries in which the League organizations have been stationed and elsewhere. Had the membership of the League been universal and the obligations binding on all states, certain of the difficulties that arose (e.g., concerning travel) would naturally have been avoided.

But the law and practice relating to the diplomatic privileges and immunities of League officials have not been wholly satisfactory. In the first place, there has been considerable uncertainty concerning the position of persons working for the

¹ These Conclusions, drafted before the San Francisco Conference, have been left in their original form. It will be observed that the desiderata put forward have been largely met in the General Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations in February, 1946. See Chapter X, below.

League but not members of the permanent staff (members of expert committees, etc.). It would be well for the position of such persons to be clarified and their treatment rendered more uniform. A fully satisfactory solution, however, might be difficult to achieve, since it would seem to postulate that very uniformity concerning their terms of service and methods of appointment which, on general grounds, it has been found desirable to avoid.

Secondly, travel facilities for officials have remained dependent, partly at least, on the type of passport issued to the officials by their respective governments. What type of visas could be obtained, and under what conditions they could be obtained, has, again, been to some extent a question of the practice of individual states and the arrangements they have made with one another.

But more important have been the difficulties arising from the fact that the special situation of international officials requires, in certain respects, a regime different from that applying to ordinary diplomats. As a result of the assimilation of these two categories, uncertainties have persisted, in some cases, concerning the exemption of officials from taxation by their national authorities, concerning military service obligations, and concerning jurisdictional domicile. In accordance with the diplomatic practice in the countries where the bulk of the staff has been stationed — Switzerland and the Netherlands — a discrimination has been made against the citizens of the countries concerned who were members of the staff.

The assimilation of League officials to ordinary diplomats has led to another type of anomaly. Both in size and in the character of the functions performed, the League organizations differed considerably from an ordinary diplomatic mission. The scope of the privileges and immunities of individual League officials in Switzerland and the Netherlands being

decided by wholesale assimilation of classes of officials to classes in the diplomatic hierarchy, full immunities have been extended to a great number of persons without reference to the question whether the character of their functions warranted a protection going beyond immunity in respect of official acts. While this can scarcely be said to have had any harmful consequences, some restriction of the immunities would clearly not have affected the proper functioning of the League organizations.

It would no doubt be useful if general rules in regard to the status of international officials, taking account of the above considerations, could be devised and universally adopted. Within that framework, the more detailed arrangements appropriate to particular countries — especially those in which the central offices are located — might be elaborated.

The three principal objects which any satisfactory regime ought to secure would appear to be as follows:

(1) *The protection of officials from the control of national authorities*

No international organization of a scope comparable to that of the League could work effectively unless its agents, in the exercise of their functions, were entirely independent of, and protected from pressure by, any individual state.² That independence is the counterpart of the impartiality and the loyalty to the international organization expected of them. To insure it *vis-à-vis* the authorities of the countries where they work has been the main purpose of the immunities from local jurisdiction granted to League officials. But it would seem desirable expressly to provide international officials some protection *vis-à-vis* other states, more especially their own. Obviously their position in this respect ought to differ

² For an admirable discussion of this point and its implications, see J. Secrétan, *The Independence Granted to Agents of the International Community*, *op. cit.*

from that of ordinary diplomats, since they must act as agents of the community of states rather than of particular governments. The immunities which they require in their own countries should be regarded not as a favor extended to them as individuals but rather as a condition of the smooth working of the international organization. These immunities would, of course, be subject to waiver and no room should be left for doubt that waiver would be appropriately exercised. No solution would be acceptable to governments or to public opinion that opened any possibility of international officials escaping from all jurisdiction.

(2) *The exemption from taxation of salaries paid by an international organization to its officials*

It is clearly desirable to avoid the imposition of financial burdens upon funds contributed to an international organization by member governments. It would be unreasonable for any one state to derive a financial advantage at the expense of the community of states owing to the fact that agents of that community are stationed within its borders. It would also seem undesirable that states should cause discrimination between international officials by taxing the salaries paid to their own citizens; undesirable indeed not only on grounds of equity but also because the natural consequence would be to discourage good men from entering, or remaining in, the service, if required to work in their own countries. This consideration would be of particular importance in countries where salaries are relatively high and the financial inducement to international service, even assuming tax exemption on international salaries, consequently small.

In this matter, as in the matter of legal immunities, what is involved is not a concession to certain individuals who happen to be international officials but rather the granting of facilities to the international organization concerned.

(3) The fullest possible facilities for official travel

In the case of any international organization which may have urgent and important tasks to perform in different countries, the expeditious and unhindered travel of its officials is essential. This would seem to imply not only that governments should extend to international officials the same facilities they accord to their own representatives and representatives of foreign governments, but also that the facilities should be afforded not on the basis of the type or nationality of the passport held, but on the basis of the officials' international function. It would therefore no doubt be useful that officials traveling on the business of the international organization should bear a special document, such as the *Lettre de Mission* used by the League, which would be recognized by national authorities as entitling the holder to the appropriate facilities, including the granting of *diplomatic* visas.

The whole question of the status of international officials ought to be based on the requirements of their special functions, which in some respects differ from those of diplomatic agents. But it should not be overlooked that the assimilation of League officials to diplomatic agents has had some very real advantages in so far as it has given them the special standing and dignity attached to diplomatic office. The League experience has amply shown how desirable it is that officials entrusted with functions of a political or diplomatic nature should enjoy a status corresponding to those functions and be in a position to deal with their "opposite numbers" in national services on a footing of equality. It has also shown that, especially in times of political disturbance, it has been of great importance to League officials to be able to claim the status of diplomatic agents and the special protection which that status affords.

CHAPTER X

THE BASES OF THE POST-WAR REGIME RELATING TO INTERNATIONAL OFFICIALS

1. *Provisions in the Constitutions of the Specialized Agencies Created during the War*

The question of the facilities for officials was taken up piecemeal in respect of the various international agencies set up by the United Nations during the war to deal with problems of the post-war world. The relevant provisions contained in the constitutions of most of these agencies, or in the agreements under which they were created,¹ were based to a large extent on the *modus vivendi* between the League of Nations and Switzerland. But certain tendencies to modify League practice were noticeable. Of these, the two following are the most important:

(a) There was a tendency to avoid any general grant of *diplomatic* privileges and immunities, and to define and limit the types of facilities required. The Food and Agriculture Organization (F.A.O.) provides for the granting of diplomatic privileges and immunities only to the "Director-General and senior staff." The European Central Inland Transport Organization (E.C.I.T.O.) limits such prerogatives to the "higher officials of the Organization." In the case of the United Nations Relief and Rehabilitation Administration (U.N.R.R.A.), the International Monetary Fund, and the International Bank for Reconstruction and Development, the term "diplomatic" has been omitted altogether with reference to the privileges and immunities of the staff.

¹ An analysis of these provisions was attached to Chapter VII of the *Report of the Preparatory Commission of the United Nations* (1945). This analysis is reproduced below as Annex V.

In so far as officials were not to be covered by diplomatic immunities, immunity from legal process was only provided in respect of acts performed by them in their official capacity.

(b) In most cases limitations were placed on the scope of the privileges and immunities to be granted by any government to its own nationals or reservations were entered on this point. Thus, the resolution of the U.N.R.R.A. Council requiring certain immunities from legal process for U.N.R.R.A. officials and employees provides that "each member government shall determine to what extent the above recommendations shall apply to its own nationals and to non-nationals in permanent residence in its territories." Member governments of E.C.I.T.O. are to grant diplomatic privileges and immunities to "the higher officials of the Organization not being their own nationals." In the case of this agency, as well as the International Monetary Fund and the International Bank, it is expressly laid down that the member governments need not grant exemption from taxation on official salaries and emoluments to their own nationals.

2. Article 105 of the Charter of the United Nations

No provisions concerning immunities and privileges were contained in the Dumbarton Oaks proposals; but the question was placed on the agenda of the Legal Problems Committee of the San Francisco Conference. That committee decided that the Charter of the United Nations should provide for the granting of appropriate facilities, both for the Organization itself and for its officials, and it proposed the insertion of the following text in the Charter:

I. (1) The Organization shall enjoy in the territory of each of its members such privileges and immunities as are necessary to the fulfillment of its purposes.

(2) Representatives of the members of the Organization and officials of the Organization shall similarly enjoy such privileges and

immunities as are necessary to the independent exercise of their functions in connection with the Organization.

II. The General Assembly may make recommendations with a view to determining the details of the application of the foregoing provisions or may propose conventions to the members of the Organization for this purpose.

The Legal Problems Committee commented as follows on the above text, which, subject to a renumbering of the paragraphs, was adopted by the Conference as Article 105 of the Charter:^{1a}

Paragraph I (1) of this proposed article refers to the Organization considered as a distinct entity. In so doing it covers all the agencies of the Organization, that is, the agencies or authorities established by the Charter, as well as the other bodies and organisms which might subsequently be established by virtue of the powers conferred by the Charter. By way of examples of such bodies and organisms, we may point to those to be established by the General Assembly, the Security Council, and the Economic and Social Council, as contemplated by Chapters V, VI and IX of the Dumbarton Oaks Proposals. Therefore there have been excluded from the provisions contemplated in the proposal of the Committee those agencies not belonging to the Organization, although they may have been brought into connection or relation with the Organization through application of the Charter. Paragraph I (2) refers to: (A) the representatives of the states members of the Organization; (B) the officials (functionaries, etc.) of the Organization and of its organs, authorities, or agencies referred to in paragraph I (1).

In order to determine the nature of the privileges and immunities, the Committee has seen fit to avoid the term "diplomatic" and has preferred to substitute a more appropriate standard, based, for the purposes of the Organization, on the necessity of realizing its purposes

^{1a} In its final form the article reads as follows:

Article 105: 1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.

2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.

and, in the case of the representatives of its members and the officials of the Organization, on providing for the independent exercise of their functions.

Paragraph II of the draft article empowers the General Assembly to formulate, if it deems it useful, recommendations leading to the determination of the details of application of the provisions in paragraph I. Should it be appropriate, such recommendations could apply only to those members who, for instance, might have weightier obligations owing to the fact that the Organization or its organs happen to have establishments on their territory. These recommendations may, if this method is found opportune, assume the form of a convention (agreement, *modus vivendi*, etc. . . .) proposed by the General Assembly to a member, to be concluded between the two. Naturally the recommendations of the Assembly might differ according to the particular circumstances of the states to which they would be addressed. On the other hand, the possibility is not excluded of a general convention to be submitted to all the Members. Paragraph II only provides a power which the General Assembly may or may not exercise. It does not impair the provisions of paragraph I. This latter sets forth a rule obligatory for all members as soon as the Charter becomes operative. In the opinion of the Committee, this rule should apply under any circumstances, its authority being in no way subordinated to the exercise by the Assembly of the power specified in paragraph II.

The draft article proposed by the Committee does not specify the privileges and immunities respect for which it imposes on the member states. This has been thought superfluous. The terms *privileges* and *immunities* indicate in a general way all that could be considered necessary to the realization of the purposes of the Organization, to the free functioning of its organs and to the independent exercise of the functions and duties of their officials: exemption from tax, immunity from jurisdiction, facilities for communication, inviolability of buildings, properties, and archives, etc. It would moreover have been impossible to establish a list valid for all the member states and taking account of the special situation in which some of them might find themselves by reason of the activities of the Organization or of its organs in their territory. But if there is one certain principle it is that no member state may hinder in any way the working of the Organization or take any measures the effect of which might be to increase its burdens, financial or other.²

² Report of the Rapporteur of Committee IV/2, as approved by the Committee, Document 933 IV/2/42 (2), June 12, 1945, *Documents of the United Nations Conference on International Organization, San Francisco, 1945*, Vol. XIII, Commission IV, Judicial Organization, pp. 703-5.

Another committee which prepared the Statute of the International Court of Justice recommended that Article 19 of the Statute of the Permanent Court of International Justice should be maintained unchanged. The Conference having accepted this proposal, Article 19 of the new Statute safeguards *diplomatic* privileges and immunities for the members of the Court when engaged on the work of the Court.

A distinction was thus introduced between the prerogatives of the judges and those of international officials.

3. Texts Elaborated by the Preparatory Commission and the General Assembly of the United Nations (First Part of First Session)

Discussions were carried a stage further by the Preparatory Commission of the United Nations. The Commission instructed the Executive Secretary to "invite the attention of the Members of the United Nations to the fact that, under Article 105 of the Charter, the obligation of all members to accord to the United Nations, its officials and the representatives of its members all privileges and immunities necessary for the accomplishment of its purposes, operates from the coming into force of the Charter and is therefore applicable even before the General Assembly has made the recommendations or proposed the conventions referred to in paragraph 3 of Article 105."

It recommended that "the General Assembly, at its First Session, should make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of Article 105 of the Charter, or propose conventions to the Members of the United Nations for this purpose." It transmitted for the consideration of the General Assembly a study on privileges and immunities, and, as "working papers," a draft general convention on privileges and immunities and a draft treaty to be concluded by the United Nations with the United States of America, the country in which the head-

quarters of the Organization were to be located. It considered that the details of the prerogatives to be accorded to members of the International Court of Justice should be determined after the Court had been consulted, and that until further action had been taken "the rules applicable to the members of the Permanent Court of International Justice should be followed." It recommended that the privileges and immunities of specialized agencies contained in their respective constitutions should be reconsidered and negotiations opened "for their co-ordination" in the light of any convention ultimately adopted by the United Nations.

A point of interest in connection with the last recommendation is that the Legal Committee of the San Francisco Conference, as noted earlier, did not intend Article 105 of the Charter to affect the position of the specialized agencies brought into relationship with the United Nations. But, even at that stage, certain delegations had suggested that the opportunity for bringing about some uniformity in the treatment of international officials and for avoiding a multiplicity of divergent rules should not be lost.

The documents of the Preparatory Commission were studied by the Sixth Committee of the General Assembly at the first part of its First Session in January–February, 1946. There emerged the following resolutions concerning the privileges and immunities of the United Nations which were adopted by the General Assembly:³

1. A resolution relating to the adoption of the General Convention on Privileges and Immunities of the United Nations, to which the text of the convention is annexed.
2. A resolution relating to negotiations with the com-

³ The texts are reproduced in Annexes VI–IX, below. Two further resolutions were adopted — one concerning insurance against third-party risks of motor cars of the Organization and of members of the staff, the other relating to national pension rights of persons transferred or seconded for service with the United Nations. These resolutions are omitted here as not being directly relevant to the regime of privileges and immunities.

petent authorities of the United States of America concerning the arrangements required as a result of the establishment of the seat of the United Nations in the United States, together with a draft convention to be transmitted as a basis of discussion for these negotiations.

3. A resolution on the privileges and immunities of the International Court of Justice.

4. A resolution on the coordination of the privileges and immunities of the United Nations and the specialized agencies.

The third of these resolutions follows closely the Preparatory Commission's draft already alluded to. Under the fourth, the General Assembly "while recognizing that not all specialized agencies require all the privileges and immunities which may be needed by others, and that certain of these may, by reason of their particular functions, require privileges of a special nature which are not required by the United Nations itself . . . considers that the privileges and immunities of the United Nations should be regarded, as a general rule, as a maximum within which the various specialized agencies should enjoy such privileges and immunities as the appropriate fulfillment of their respective functions may require, and that no privileges and immunities which are not really necessary should be asked for"; it "instructs the Secretary-General to open negotiations with a view to the re-consideration . . . of the provisions under which the specialized agencies at present enjoy privileges and immunities."

The first and second resolutions, and more particularly the draft conventions to which they refer call for more extended comment.

4. The General Convention on the Privileges and Immunities of the United Nations

Although the Preparatory Commission framed the provisions relating to privileges and immunities in the form of a

convention, it left undecided the question whether Article 105 of the Charter could best be implemented by attempting to secure the general adoption of such a convention or by treating the provisions as recommendations which individual countries would be at liberty to translate into national legislation as they saw fit.

At the outset of its work, the Sixth Committee of the Assembly instructed its subcommittee on privileges and immunities to consider and report on this issue. The subcommittee was in favor of a general convention, without prejudice to the possibility of additional recommendations being adopted on particular points.⁴ This view was upheld. The convention, as revised by the subcommittee, was approved by the General Assembly and proposed by it "for accession by each member of the United Nations." A certain flexibility was introduced by the insertion of a clause (Final Article, Section 36), authorizing the Secretary-General to "conclude with any Member or Members supplementary agreements adjusting the provisions of this convention so far as that Member or those Members are concerned," such supplementary agreements to be subject, in each case, to the approval of the General Assembly.

To a student of the regimes of immunities and privileges

"There were three main reasons for the conclusion of the Sub-Committee. In the first place it was thought that the immunities necessary for the fulfilment of the purposes of the Organization and the independent exercise of their functions by its officials and by the representatives of Members should be laid down in a manner which was as precise as possible. Secondly, that the method should be adopted which would be likely to lead to the greatest uniformity in application; and thirdly that the procedure should be such as best to facilitate the passing by Members of the necessary domestic legislation. All these three reasons pointed to the adoption of a convention as the best course. The procedure of recommendations in itself suggests some indefiniteness of content as well as latitude in application. Further, a convention is more usual, as well as in general a more satisfactory basis, upon which Governments can approach their respective legislatures in order to obtain any legislative action which may be necessary. Certain members of the Committee, and amongst them some representing Federal States, stressed their view that a convention adopted by the General Assembly would be the method best calculated to facilitate legislation." United Nations, General Assembly, Sixth Committee, *First Report of the Sub-Committee on Privileges and Immunities*, Document A/C.6/17. — 26 January, 1946.

hitherto applied to international officials, the convention is of very great interest. An attempt has at last been made to codify the facilities which experience has shown to be really necessary in the case of international officials — facilities that in some respects go beyond and in others fall short of those required in the case of diplomatic agents.

Certain points of central importance in the convention and certain innovations may be briefly noted:

(a) In addition to the immunities and privileges accorded to all officials, the Secretary-General and all Assistant Secretaries-General shall be accorded "in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law." (Article V, Section 19.) A qualification which had been inserted in the Preparatory Commission's draft that these officials "shall not be entitled to invoke immunity from legal process as regards matters not connected with their official duties before the Courts of the country of which they are nationals" was omitted in the final text.

The same high officials, as well as Directors, when traveling on United Nations *laissez-passer* on the business of the United Nations, are to be granted "the same facilities as are accorded to diplomatic envoys." (Article VII, Section 27.)

(b) The principal privileges and immunities accorded to all officials are set out in Article V, Section 18. They cover immunity from legal process in respect of "acts performed by them in their official capacity," exemption from taxation on their United Nations salaries and emoluments, immunity from national service obligations, immunity from immigration restrictions and alien registration, the same privileges in respect of exchange facilities as are accorded to diplomatic officials of comparable rank, the same repatriation facilities in time of crisis as diplomatic envoys, and duty-free importation of

furniture and effects at the time of first taking up their post. Of especial interest, of course, is the immunity from "national service obligations" — an immunity required in the interests of the Organization which is not conferred on ordinary diplomats.

The Secretary-General is to specify (Article V, Section 17) and to communicate to the General Assembly and to the governments of members, the categories of officials to which the provisions of Articles V and VII shall apply. No distinction is made in those articles or elsewhere in the convention between officials who are nationals and those who are not nationals of the country concerned.⁵

(c) Under Article VI, experts (other than officials coming within the scope of Article V) performing missions for the United Nations are to be accorded "such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions"; and the principal privileges and immunities which they are to receive are specified. The article thus seeks to clarify a situation which, as observed in Chapter IX, has hitherto been somewhat obscure.

(d) The Preparatory Commission proposed that the Organization should issue United Nations passports to its officials. The General Assembly replaced the term "passports" by *laissez-passer* (Article VII, Section 24), and stipulated that these *laissez-passer* should be "recognized and accepted as valid travel documents by the authorities of Members."

⁵ As regards exemptions from taxation and immunity from national service obligations, the United States delegate on the Sixth Committee "made reservations on the grounds that the right to exempt United States nationals from taxation and from national service obligations was a prerogative of the Congress of the United States." The Byelo-Russian, Ukrainian, and U.S.S.R. delegations made reservations concerning immunity from national service obligations, and also in regard to Article VIII, Section 30, which relates to the settlement of differences arising out of the interpretation or application of the convention, "on the grounds that these items raised constitutional problems on which the most representative bodies in their countries had to be consulted." A contingent reservation on the same points was made by the delegate from Argentina.

Persons who have a certificate that they are traveling on the business of the United Nations, whether holding a *laissez-passer* or not, are to be granted facilities for speedy travel, including, where necessary, the speedy grant of visas. No mention is made, however, of the nature of the passports or of the visas to be provided.

(e) Under Article V, Section 20, the Secretary-General has not only the right but also the duty to exercise waiver where the immunity of an official would "impede the course of justice and can be waived without prejudice to the interests of the United Nations." No authority was expressly empowered to waive the immunities of the heads of the League of Nations organizations. But, in the case of the Secretary-General of the United Nations, the Security Council is given the right to waive immunity.

(f) No provision was made in any of the documents relating to the immunities and privileges of League of Nations organizations and their officials for the settlement (1) of disputes of a private law character to which the League of Nations was a party; (2) of disputes involving officials whose immunities were not waived; or (3) of differences arising out of the interpretation or application of the documents in question.

By Article VIII, Section 29, of the convention, the United Nations is to "make provisions for appropriate modes of settlement" of disputes falling under (1) and (2), above. Section 30 provides for reference to the International Court of Justice of disputes falling under (3) that may arise between the United Nations and a member state.

5. The Draft Convention between the United Nations and the United States of America

The question of the form and content of the agreement that should be concluded between the United Nations and the state in which it would have its headquarters was taken up

by the Executive Committee of the Preparatory Commission. It recommended that the permanent headquarters of the United Nations be located in the United States of America, that the Preparatory Commission should examine "the report in Part III, Chapter X, Section 2, at an early date, and agree upon a recommendation to the first part of the First Session of the General Assembly as to . . . the exact requirements to be embodied in an agreement to be concluded between the competent authorities of the host country and the United Nations," and that it should "authorize a committee to make such studies and undertake such consultations with the afore-said authorities of the host country as may be necessary for the purpose of ascertaining their readiness to meet such requirements."

The report referred to in the above recommendations contained the following findings:

1. Any agreement entered into by the United Nations with the host state should provide that the United Nations, its principal and subsidiary organs and the specialized agencies should enjoy all necessary guarantees and facilities provided by Articles 104 and 105 of the Charter for the free exercise, in all circumstances, of their functions; diplomatic immunities and privileges, including inviolability of buildings and property owned or occupied by the United Nations or its organs; satisfactory visa facilities; exemption from immigration regulations for the members of the staff, experts and permanent and temporary foreign Delegations connected with the United Nations. (Agreements made with states on whose territory the headquarters of any of the principal and subsidiary organs of the United Nations or of specialized agencies are located should include similar provisions.)

2. In view of the great importance that timely and accurate news of the work of the United Nations has for the peoples of the world, proper facilities, in all circumstances, should be secured from the host State, in the matter of visas and exemption from immigration regulations, for press, broadcasting stations and newsreels representatives duly accredited to the United Nations. Privileges should also be secured for the establishment of couriers and the use of diplomatic pouches and codes by the United Nations and the foreign Delegations

to it. Furthermore, the site should possess ample facilities for speedy, unrestricted and uncensored telegraph, telephone, radio and postal communications with the world at large, for use by the United Nations and the press.⁶

A draft convention giving effect to these principles was worked out in November and December by a juridical sub-committee of the committee of the Preparatory Commission dealing with headquarters, in consultation with the Committee on Legal Questions which was elaborating the General Convention on Privileges and Immunities. A juridical sub-committee of the Headquarters Committee was likewise primarily responsible for amending the draft at the General Assembly stage (January–February). At neither stage did the United States delegation take any part in the discussion or the voting relating to the draft.

The status as well as the origin of the draft convention with the United States of America differs from that of the General Convention on Privileges and Immunities. It was not approved and put forward as a definitive text but merely “transmitted by the General Assembly to the Secretary-General for use . . . as a basis of discussion” in the negotiations⁷ with the United States authorities. The Secretary-General was to report to the General Assembly the results of these negotiations and any agreement, apart from purely temporary arrangements, was to be approved by the General Assembly before being signed on behalf of the United Nations.

A substantial part of the draft convention — its Annex II — represents a recast of the General Convention in bilateral form; and it is provided (Article IX, Section 32) that the provisions of that Annex shall apply only until such time as the United States becomes a party to the General Convention.

⁶ *Report by the Executive Committee to the Preparatory Commission of the United Nations* (Preparatory Commission of the United Nations, 1945), p. 115.

⁷ In these negotiations, the Secretary-General was to be assisted by a “committee composed of persons appointed by the governments of Australia, Belgium, Bolivia, China, Cuba, Egypt, France, Poland, United Kingdom, U.S.S.R.”

Two points in the body of the draft directly concerning international officials may be singled out for special mention:

In the first place, the immunity of the United Nations itself, and of "its property and assets wherever located and by whomsoever held" (Annex II, Article II, Section 2), as well as the creation of an inviolable zone for the headquarters of the United Nations (Article III, Section 10) which, save as otherwise provided in the convention, should "be under the control and authority of the United Nations" (Article III, Section 11), would involve for United Nations officials facilities and measures of protection *vis-à-vis* the United States authorities going beyond those that are specifically accorded to them. What this would mean in practice would, of course, depend to some extent upon the size of the zone, upon whether the officials resided within it, upon the internal regulations made by the Secretary-General, and upon the detailed arrangements for the application of the convention made between him and the United States authorities.

In the second place, under Article V, persons accredited to the United Nations by members as "resident representatives" and their staffs are to be accorded by the United States Government "the same privileges and immunities as that Government accords to the diplomatic envoys accredited to it, and the staffs of these envoys." Among the officials of the United Nations, as we have seen, only the Secretary-General and the Assistant Secretaries-General are in this respect assimilated to members of the diplomatic corps.⁸ A distinction is thus created between two classes of officials residing at the headquarters — United Nations officials properly speaking and members of permanent national delegations — which did not exist at Geneva.

⁸ Non-resident national representatives to organs of the United Nations and to conferences called by the United Nations are to have specific facilities which fall short of diplomatic privileges and immunities. See below, Annex VI, Article IV.

6. Legislation in the United Kingdom and the United States of America, 1944 and 1945

Two important national enactments — the British "Diplomatic Privileges (Extension) Act" of November, 1944, and the United States "International Organizations Immunities Act" of December, 1945 — reflect the major tendencies apparent in the constitutions of the specialized agencies, to which attention has been called in Section I. One of those tendencies — the limitation on the scope of the privileges and immunities that should be granted by the government to its own nationals in the international organization — did not prevail at United Nations meetings; for, as noted above, the General Convention makes no distinction as to the nationality of international officials.

Under the British Act, the King may, by Order in Council —

(a) . . .

(b) confer upon such number of officers of the organization, other than British subjects, as may be specified in the Order, being the holders of such high offices in the organization as may be specified in the Order, and upon any person who is the representative of a member government on the governing body or any committee of the organization, to such extent as may be so specified, the immunities and privileges set out in Part II of the Schedule to this Act;

(c) confer upon such other classes of officers and servants of the organization (including British subjects holding such high offices as aforesaid or representing any member government as aforesaid) as may be specified in the Order to such extent as may be so specified, the immunities and privileges set out in Part III of the Schedule to this Act;

Provided that the Order in Council shall not confer any exemption from taxes or rates upon any person who is a British subject and whose usual place of abode is in the United Kingdom.⁹

Parts II and III of the Schedule to the Act, to which reference is made, read as follows:

⁹ 7 & 8 Geo. 6. Ch. 44.

116 *Immunities and Privileges of International Officials*

PART II

Immunities and privileges of high officers and government representatives

1. The like immunity from suit and legal process as is accorded to an envoy of a foreign sovereign power accredited to His Majesty.
2. The like inviolability of residence as is accorded to such an envoy.
3. The like exemption or relief from taxes and rates as is accorded to such an envoy.

PART III

Immunities and privileges of other officers and servants

1. Immunity from suit and legal process in respect of things done or omitted to be done in the course of the performance of official duties.
2. The following exemption or relief from taxes and rates:
 - (a) in the case of a British subject who is a national or citizen of, or belongs to, any part of His Majesty's dominions outside the United Kingdom and would, if he were not a British subject, be qualified to receive the immunities and privileges set out in Part II of this Schedule, the like exemption or relief from taxes and rates as is accorded to an envoy of a foreign sovereign Power accredited to His Majesty;
 - (b) in any other case exemption from income tax in respect of emoluments received as an officer or servant of the organization.

Orders in Council were issued under this Act in respect of U.N.R.R.A.¹⁰ in January, 1945, and the United Nations Organization and Preparatory Commission¹¹ in December, 1945. In the case of the United Nations, the immunities and privileges set out in Part II of the Schedule are to be enjoyed by the following persons "not being British subjects and not exceeding at any one time ten in number": The Secretary-General and any Assistant Secretary-General of the Organization, and any other officer of the Organization holding a rank equivalent to Assistant Secretary-General. Officials of this category who are British subjects are covered by the im-

¹⁰ Statutory Rules & Orders, 1945, No. 79.

¹¹ *Ibid.*, No. 1539.

munities and privileges set out in paragraph 1 of Part III of the Schedule and, if they are nationals or citizens of, or belong to, any part of His Majesty's Dominions outside the United Kingdom, the immunities and privileges specified in paragraph 2(a), provided that tax exemption "shall not extend to any person whose usual place of abode is in the United Kingdom." Other officials, down to the rank of Head Assistant¹² (roughly, those corresponding to First Division officials in the League classification) are to enjoy the immunities and privileges specified in paragraphs 1 and 2(b) of Part III of the Schedule, provided again that the exemption from income tax "shall not extend to any British subject whose usual place of abode is in the United Kingdom." All the immunities and privileges provided are expressly made subject to waiver.

The United States Act¹³ extends a number of privileges and immunities granted to officers and employees of foreign governments and their families in the United States to officers and employees and their families of international organizations in which the United States participates and which shall have been designated by the President through an executive order. These facilities refer to immunity from suit and legal process relating to acts performed by the persons concerned in their official capacity; the exclusion from gross income for federal tax purposes of all emoluments received from international organizations by "officials not citizens of the United States"; exemption of officials from federal insurance and social security contributions and the federal unemployment tax; exemption from immigration restrictions and other restrictions regulating the entry and departure of aliens; alien registration and finger printing, and the registration of foreign agents; duty-free importation of baggage and effects in connection

¹² One of the categories suggested in the *Report of the Executive Committee of the Preparatory Commission*, but not adopted in practice.

¹³ Public Law 291, 79th Congress, December 29, 1945.

ANNEX I

THE PROVISIONAL "MODUS VIVENDI" OF 1921 WITH THE SWISS FEDERAL COUNCIL

A

LETTER OF JULY 19, 1921, FROM THE HEAD OF THE FEDERAL POLITICAL DEPARTMENT TO THE SECRETARY-GENERAL OF THE LEAGUE OF NATIONS

[*Translation*]¹

SIR,

The Swiss Federal Government has been particularly happy to note that, as a result of the conferences held at Geneva and Berne a few months ago, and subsequent correspondence, the views of the Secretary-General of the League of Nations concerning the application of Article 7, paragraph 4, of the Covenant now coincide on many points with its own views on the subject.

On the basis of the result obtained in our conversations, the Federal Council has instructed us to transmit to you the following proposals regarding the points on which an agreement has been reached. These proposals might form the basis of an initial and provisional *modus vivendi* for the League of Nations at Geneva. This partial settlement, which may be subject to revision at any time at the request of either party, could easily be completed subsequently as each point still under discussion was settled.

The proposals in question are as follows:

I. *Staff*

The staff of the Secretariat of the League of Nations and the International Labour Office shall be accorded the same prerogatives and immunities as are conferred by international law and practice on the staff of diplomatic missions; it shall accordingly be placed on the same footing, *mutatis mutandis*, as the members of diplomatic missions accredited to the Confederation. For the purposes of this arrangement the staff is divided into two distinct categories, each of which is in a different situation.

The staff of the First Category (in Berne, the diplomatic corps and the heads of chancelleries) will comprise, in Geneva, the members of

¹ For original French text, see below, pp. 129-35.

the staff whose rank and duties correspond to those of public officials. This staff, known as the "extritorial staff" will, by assimilation with the diplomatic corps in Berne, be accorded the benefit of the prerogatives and immunities which, in practice, are collectively described by the term "extritoriality" and which are as follows:

A. Inviolability, in the technical signification given to this word in international law.

B. Extritoriality, in the precise and limited sense of this term, that is to say, the presumption according to which the person who is entitled thereto is deemed to retain his domicile in his country of origin.

C. Immunity from civil and criminal jurisdiction, as this is understood in international law.

In application, by analogy, of the custom which confers on Governments the right to ask, at any time, for the recall of a diplomat whose attitude or conduct gives grounds for dissatisfaction, the Secretary-General of the League of Nations and the Director of the International Labour Office, if and when the Federal Government reports such cases to them, will submit them to careful examination and will apply, with regard to the official in question, administrative sanctions which may amount to dismissal. This procedure will, of course, be without prejudice to any judicial prosecution that may be instituted in the event of infringement of the law. Judicial action (save for the exceptions provided for in international law) will be a matter for the competent authorities of the country of origin of the person concerned. If, however, the Secretary-General or the Director of the International Labour Office should waive the immunity covering their official, the Swiss Courts could then, the bar of extritoriality having been removed, have the matter in question brought before them through the normal application of their own procedure. Particularly in serious cases, the waiving of the immunity would be highly desirable.

In civil matters also, if the official concerned waived his right to invoke his extritoriality, the Swiss Courts would resume their competence as being the Courts of the place of *de facto* domicile.

D. Fiscal immunity, that is to say, exemption from direct personal taxes and taxes on luxuries, general taxes on property, whether in the form of capital or of income, and from war-taxes (*décimes de guerre*).

E. In regard to Customs matters:

(1) In pursuance of the decision taken in this connection by the Federal Council, on July 5th, 1921, the under-mentioned Principal Officers of the League of Nations, provided they are not Swiss

citizens, shall enjoy freedom from Customs duties in respect of all articles intended for their personal use, namely:

- (a) The Secretary-General of the League of Nations and his Deputy, the two Under-Secretaries-General and the eight Directors of the Secretariat;
- (b) The Director and the Deputy Director of the International Labour Office and the two Chiefs of Division of that Office.

These officials shall, further, on the same footing as diplomatic representatives in Berne, be exempt, in principle, from Customs examination of their baggage.

(2) The remainder of the staff of the first category shall enjoy the same advantages as are accorded to the whole of the diplomatic corps in Berne by the Decree of the Federal Council dated October 8th, 1912 (importation free of Customs duties of new articles for the first establishment of a home (*première installation*), etc.); the Customs examination of the baggage of these officials shall, as in the case of the diplomatic corps, be limited to what is absolutely necessary.

F. Members of the staff of the first category will be entitled to diplomatic visas on their passports. Such a visa, issued by the Foreign Affairs Division of the Federal Political Department, may be either a visa for a particular occasion, that is to say, valid for a single journey from and return to the country or, on request, a permanent visa, that is to say, valid for an unlimited number of journeys from the country and return thereto by any frontier points, with a period of validity that may extend to one year. The diplomatic visa may be obtained also from any Swiss Legation abroad.

G. The wife and the children of officials of the first category will be granted the same status as the head of the family, provided they reside with him and do not exercise any vocation.

The Secretariat and the International Labour Office will draw up a list of the names of the members of their staff of the first category, specifying the nationality, duties and address of each official and stating whether he is married or unmarried. This list will be communicated to the Federal Political Department which will be regularly informed of alterations; on the basis thereof, the Foreign Affairs Division will provide the persons concerned with identity cards, bearing the photograph of the holder; these cards, countersigned by the Secretariat or the International Labour Office, will serve to establish the identity of the official for the purposes of the Federal and Cantonal authorities; they will be returned in the case of final departure.

The members of the staff of the Second Category (nonexterritorial) will comprise the remainder of the official staff, that is to say the technical and manual staff, or, in other words, all those who, although they cannot be assimilated to public officials, are nevertheless employed and paid by the League of Nations and are in the service solely of the Secretariat of the League of Nations or the International Labour Office. The situation of the members of this category of the staff will be as follows:

A. They will enjoy complete immunity in respect of acts performed by them in their official capacity and within the limits of their duties. They will, however, be subject to local laws and jurisdiction in respect of acts performed by them in their private capacity. Nevertheless, if judicial, police or other measures taken with regard to a member of this category of the staff should be of such a nature as to interfere with the normal functioning of the services of the League of Nations, the Federal Political Department will, at the request of the Secretariat, at once bring this fact to the notice of the competent authority which will take account of it to the extent compatible with public order.

B. The members of the staff of this category will be exempt from the obligation to report in person to the local police authorities and to submit their identity papers. A list of the names of the members of the staff of the second category, similar to that mentioned above with regard to members of the exterritorial staff, will also be supplied to the Federal Political Department by the Secretariat and the International Labour Office. On the basis on this list, which must, like the list of the members of the staff of the first category, be kept constantly up to date, identity cards, of a colour different from those of the members of the exterritorial staff, will be issued to the persons concerned by the Foreign Affairs Division.

C. In regard to fiscal matters, the members of the staff of the second category will, in accordance with the Federal Decree dated September 28th, 1920, (Article 18) and the Decree dated June 14th, 1921 of the Council of State of the Canton of Geneva, be exempted:

- (1) from taxes (*taxes*) on salary (*revenu professionnel — traitements*);
- (2) from the tax (*taxe*) on capital (fortune), (in so far, at all events, as the amount of the income does not exceed that of the salary);
- (3) from the Federal War Tax.

D. In regard to Customs matters, members of the staff of the second category will have the benefit of the same facilities in respect of Customs examination of baggage as members of the exterritorial

staff. The members of this category of the staff will, however, like the corresponding members of staffs in Berne, not be entitled to any exemption from Customs duties.

E. In regard to passports, the members of the staff of the second category will, like the corresponding members of staffs in Berne, receive the official (non diplomatic) visa of the Foreign Affairs Division. Like the diplomatic visa, this visa is either a visa for a particular occasion or a permanent visa, with the same maximum period of validity.

F. The wife and children of a member of the staff of the second category will be granted the same status as the head of the family, provided they reside with him and do not exercise any vocation.

The above provisions, both those concerning extritorial staff and those applicable to staff of the second category, do not apply to *staff of Swiss nationality*, the position of the latter still remaining unsettled.

It can, however, be stated forthwith:

A. That swiss nationals who are officials or employees of the League of Nations are immune from jurisdiction in respect of all acts performed by them in their official capacity and within the limits of their duties;

B. That those of them who by reason of their duties are classed in the first category are entitled, when proceeding abroad on mission, to an official passport of the Federal Council;

C. That, in accordance with the Decree dated June 14th, 1921, of the Council of State of the Canton of Geneva they shall be exempted, in that Canton, from payment of the tax on earned income in respect of the salaries paid to them by the League of Nations.

II. *Premises, Archives and Couriers*

A. The premises in which the services of the League of Nations (Secretariat and International Labour Office) are installed (in the case of buildings occupied by League offices, the buildings themselves, together with gardens and annexes) will be inviolable, by which should be understood that no agent of the public authority will be entitled to enter them, in the exercise of his duties, without the consent of the Secretariat or of the International Labour Office.

B. The archives of the League of Nations will be inviolable.

C. In application, by analogy of the right enjoyed by diplomatic missions to correspond freely with their Governments, the Secretariat and the International Labour Office will be entitled to use official couriers for the transmission of their official correspondence

to their agents abroad (and *vice versa*); reference should, in this connection, be made to the correspondence exchanged between the Foreign Affairs Division and the Secretariat concerning the details of the arrangements for the service of couriers between Geneva and Paris.

D. The League of Nations will enjoy complete exemption from Customs duties in respect of all articles which are its own property (as distinct from the property of the members of its staff) and are intended solely for the use of the Secretariat or of the International Labour Office (furniture, equipment, office supplies, etc.).

III. *International Personality of the League of Nations*

Although Article 7 of the Covenant of the League of Nations relates only to the staff and the premises of the League, it should be recognised that, in application, if not of the letter at least of the spirit of the Covenant, the League of Nations may claim to possess international personality and legal capacity and that, consequently, it is entitled to a status analogous to that of a State. It follows that the League of Nations may claim the same independence in respect of Swiss administrative and judicial organs as other members of the international community and thus cannot be sued before the Swiss Courts without its own consent (apart from such exceptions as are recognised in international law, e.g. in regard to suits concerning real property, etc.).

Nevertheless, as the League of Nations, unlike other international legal entities, cannot, for lack of territory, offer any Courts, it follows that it cannot, at present, be sued anywhere without its own consent. Doubtless, the League of Nations may already in virtue of the fact that its seat is in Geneva, at any time, apply to Swiss Courts; for this purpose it need only waive the benefits of its extritoriality; it may do this, either expressly, by becoming the plaintiff, or tacitly, by not raising the objection that the Court in question has no jurisdiction. The Swiss Government is, however, of opinion that it would certainly be preferable that the League should, in its own interest, not confine itself to the jurisdiction of the Swiss Courts, which, at present, is not compulsory upon it but merely optional, and that it should, as soon as possible, elect a general legal domicile. The choice of such a domicile might, moreover, be entirely provisional in character. Having regard to the fact that the League of Nations has its seat in Geneva, it would seem to be natural that it should elect domicile in that city.

As the League of Nations may already, if it so desires, appeal to the Swiss Courts, it is not necessary for the Federal Government to

make any offers in this connection; it confines itself to expressing the hope that it may at an early date be in possession of such proposals as the Secretariat may be able to make with a view to remedying the abnormal features of the present situation.

Whilst awaiting such communications as you may be good enough to make to us concerning the foregoing, we avail ourselves of this opportunity, etc.

(Signed) MOTTA

Federal Political Department

The Hon. Sir ERIC DRUMMOND,
Secretary-General of the League of Nations.

B

REPLY OF OCTOBER 24, 1921, FROM THE SECRETARY-GENERAL

[*Translation*]¹

SIR,

In reply to your letter B.56/41.D.I-CA, dated July 19th, I, for my part, am glad to know that the views of the Swiss Federal Government regarding the questions of diplomatic privileges and immunities coincide on most points with my own.

Indeed, it seems that it will be possible to establish a provisional *modus vivendi* on the lines of the Swiss Federal Government's proposals and the following observations which I venture to offer.

I concur in the view that this first partial arrangement may be revised at any time at the request of either party.

For the present, therefore, the following conclusions may be regarded as agreed upon:

I. *Staff*

The staff of the Secretariat of the League of Nations and the International Labour Office shall be placed on the same footing *mutatis mutandis* as the members of diplomatic missions accredited to the Confederation, that is to say, it shall be accorded the same prerogatives and immunities as are conferred by International Law and practice on the staff of diplomatic missions.

Consequently, the members of the staff whose rank corresponds to that of public officials shall enjoy the prerogatives and immunities which constitute what is known as extritoriality.

¹ For original French text, see below, pp. 135-37.

I shall have the honour to present to the Swiss Federal Government a list of the names of the members of the staff who are in this situation and I shall not fail to communicate, from time to time, any alterations which occur.

In regard to the details mentioned under headings A and D, F, E, G, relating to this category, I am able to state my complete agreement.

Agreement exists also concerning the situation of the second category (non-territoriality) mentioned in the letter of the Swiss Federal Government. I would, however, venture to point out that it might be desirable to institute for the members of this category of the staff the same fiscal immunity as has been instituted for members of the staff of the first category.

Agreement exists, further, in regard to questions relating to the premises in which the services of the League of Nations are installed. The premises in question consist of the building occupied by the Secretariat and that occupied by the International Labour Office. The same will of course apply to any buildings that may be temporarily occupied by the League of Nations, such as the Assembly Hall and the Labour Conference Hall during the period of their meetings. Should other buildings or land be occupied by the League of Nations, the Federal Government will be informed.

As regards the proposals made concerning the archives of the League of Nations, the courier service and the question of exemption from Custom duties in respect of articles belonging to the League and intended solely for the use of the Secretariat or the International Labour Office, no observations are called for.

Finally, I would wish to express my appreciation, both on my own behalf and on behalf of the staff, for the courtesy shown by the Swiss Government in regard to exemptions from Customs duties and the Customs facilities offered by the Swiss Federal Government to the staff under numbers I E and II.

It is understood that the position of the staff of Swiss nationality still remains to be settled. It is, however, understood that Swiss nationals who are officials or employees of the League of Nations will be immune from jurisdiction in respect of acts accomplished by them in their official capacity and within the limits of their duties; that those who by reason of their duties are classed in the first category, shall be entitled, when proceeding abroad on a mission, to an official passport of the Federal Council and that they shall be exempt from the payment of the tax on earned income in so far as regards the salaries granted to them by the League of Nations.

With regard to the last point, I think that the salaries granted by the League of Nations should be exempted from every possible kind of taxation.

The letter of the Swiss Federal Government refers also to the international personality of the League of Nations. It will perhaps not be necessary to go into details in regard to this question. It could not be finally settled by the present correspondence. For my part, I concur in the view that the League of Nations may claim the same independence with regard to Swiss judicial administrative organs as Members of the international community, that is to say, it cannot, in principle be sued before Swiss Courts without its own consent. I think there can be no doubt that, in certain circumstances, the League of Nations will consent to recognise the jurisdiction of a judicial tribunal in the event of a dispute. Nevertheless, it would seem to me to be preferable that it should, for the time being, retain complete liberty in this matter, and this, moreover, will be justified because hitherto, no inconvenience would seem to have arisen from the practice followed in this connection. It will be possible for decisions on this matter to be taken by the competent organs of the League of Nations when circumstances so require.

I would add that, in regard to the question of diplomatic rights, immunities and privileges, the Director of the International Labour Office, whom I have consulted, has informed me that he agrees with my statements and with the *modus vivendi* arrived at whilst, at the same time, stressing the reservation to which I have already referred at the beginning of this letter to the effect that what is at present contemplated is nothing other than a *modus vivendi* which may be revised at any time.

In submitting the foregoing observations, I avail myself of the opportunity, etc.

ERIC DRUMMOND
Secretary-General

Monsieur le Conseiller Fédéral J. MOTTA,
Head of the Federal Political Department,
Berne.

DÉPARTEMENT POLITIQUE FÉDÉRAL
Division des Affaires Etrangères

Berne, le 19 juillet 1921

MONSIEUR LE SECRÉTAIRE GÉNÉRAL,

Le Gouvernement Fédéral Suisse a eu une satisfaction particulière à constater qu'à la suite des conférences tenues, à Genève et

à Berne, il y a quelques mois, et des correspondances ultérieurement échangées, les vues du Secrétaire général de la Société des Nations, concernant la mise en application de l'article VII, 4ème alinéa, du Pacte, concordaient aujourd'hui, sur un grand nombre de points, avec sa propre manière de voir.

S'inspirant du résultat de nos pourparlers, le Conseil Fédéral nous a chargés et nous avons l'honneur de vous faire part des propositions suivantes, qui ont trait aux questions au sujet desquelles l'accord s'est établi. Ces propositions pourraient constituer la base d'un premier *modus vivendi* provisoire de la Société des Nations à Genève; ce règlement partiel, constamment révisable à la demande de l'une ou de l'autre des Parties, serait facile à compléter dans la suite, à mesure que les points demeurés encore en suspens auront été réglés.

Voici les propositions dont il s'agit:

I. Personnel

Le personnel du Secrétariat général de la Société des Nations et du Bureau international du Travail bénéficiera des mêmes prérogatives et immunités que celles reconnues par le droit international et par la pratique au personnel des Missions diplomatiques; il sera, conséquemment, soumis à un régime analogue, *mutatis mutandis* à celui appliqué aux membres des Missions diplomatiques accréditées auprès de la Confédération. Ce régime comporte la division du personnel en deux catégories distinctes, dont la situation diffère.

Le personnel de première catégorie (à Berne, le corps diplomatique et les chefs de chancellerie), comprendra, à Genève, les membres du personnel qui, par leur rang et leurs attributions, correspondent à des fonctionnaires publics. Ce personnel, dit "personnel extraterritorial" sera, par assimilation avec le corps diplomatique à Berne, admis au bénéfice des prérogatives et immunités que la pratique synthétise sous le nom d'"extraterritorialité" et qui sont les suivantes:

A. L'inviolabilité, dans l'acceptation technique que le droit international donne à ce mot.

B. L'extraterritorialité, au sens précis et restreint de ce terme, soit la présomption en vertu de laquelle celui qui y a droit est censé conserver son domicile dans son pays d'origine.

C. L'immunité de juridiction civile et criminelle, telle qu'on l'entend en droit international.

En application, par analogie, de la coutume qui confère aux Gouvernements le droit de demander, en tout temps, le rappel d'un diplomate dont l'attitude ou la conduite auraient laissé à désirer,

le Secrétaire général de la Société des Nations et le Directeur du Bureau international du Travail, lorsque le Gouvernement Fédéral leur aura signalé des cas semblables, les soumettront à un examen attentif et prendront à l'égard du fonctionnaire en cause des sanctions administratives qui iront éventuellement jusqu'au licenciement. Cette procédure sera, cela va de soi, sans préjudice des poursuites judiciaires à ouvrir en cas d'infraction. L'action judiciaire (sauf les exceptions prévues par le droit international) appartiendra aux organes du pays d'origine de l'intéressé. Si toutefois le Secrétariat général ou le Bureau international du Travail renonçaient à l'immunité couvrant leur fonctionnaire, les tribunaux suisses, l'obstacle de l'exterritorialité étant levé, pourraient alors être saisis en application normale de leur procédure. Particulièrement dans les cas graves, la renonciation à l'immunité serait très désirable.

En matière civile également, si le fonctionnaire renonçait à se prévaloir de son exterritorialité, les tribunaux suisses retrouveraient leur compétence en tant que tribunaux du for du domicile de fait.

D. L'immunité fiscale, soit l'exonération des impôts directs personnels et des taxes somptuaires, des impôts généraux sur la fortune, soit sur le capital, soit sur le revenu et des décimes de guerre.

E. En matière de douane:

1°) Par application de la décision prise à ce sujet par le Conseil Fédéral, le 5 de ce mois, les hauts fonctionnaires de la Société des Nations suivants, pour autant qu'ils ne sont pas citoyens suisses, bénéficieront de la franchise de douane pour tous les objets destinés à leur usage personnel:

- a) le Secrétaire général de la Société des Nations et son adjoint, les deux Sous-Secrétaires généraux et les huit Directeurs du Secrétariat général;
- b) le Directeur et le Sous-Directeur du Bureau international du Travail, les deux chefs de Division de ce bureau.

Ces fonctionnaires seront, en outre, à l'égal des Représentants diplomatiques à Berne, dispensés, en principe, de la visite douanière de leurs bagages.

2°) Le reste du personnel de première catégorie jouira des mêmes avantages que ceux accordés à l'ensemble du corps diplomatique à Berne par l'arrêté du Conseil Fédéral du 8 octobre 1912 (entrée en franchise des effets neufs de première installation, etc.); la visite en douane des bagages de ce personnel sera, comme à l'égard du corps diplomatique, réduite au strict minimum.

F. Le personnel de première catégorie aura droit au visa diplomatique de ses passeports. Ce visa, délivré par la Division des

Affaires Etrangères du Département Politique Fédéral, est, soit simple, c'est-à-dire valable pour un seul voyage aller et retour, soit, sur demande, permanent, c'est-à-dire valable pour un nombre indéterminé de voyages aller et retour par toutes frontières, avec durée de validité pouvant aller jusqu'à un an. Le visa diplomatique peut également être obtenu auprès d'une Légation de Suisse à l'étranger.

G. La femme et les enfants des fonctionnaires de la première catégorie partageront la condition du chef de famille, s'ils vivent avec lui et sont sans profession.

Le Secrétariat général et le Bureau international du Travail établiront une liste nominative de leur personnel de première catégorie, indiquant la nationalité, les attributions et l'adresse de chaque fonctionnaire et mentionnant qu'il est marié ou célibataire. Cette liste sera communiquée au Département Politique Fédéral, qui sera tenu régulièrement au courant des mutations; sur sa base, la Division des Affaires Etrangères fournira aux intéressés des cartes d'identité, munies de la photographie du titulaire; ces cartes, contresignées par le Secrétariat Général ou le Bureau international du Travail, serviront à la légitimation du fonctionnaire à l'égard des Autorités Fédérales et Cantonales; elles seront restituées en cas de départ définitif.

Le personnel de deuxième catégorie (non exterritorial) comprendra le reste du personnel officiel, soit le personnel technique et manuel, tous ceux, en d'autres termes qui, sans être assimilables à des fonctionnaires publics, sont néanmoins engagés et salariés par la Société des Nations et se trouvent au service exclusif de son Secrétariat général ou du Bureau international du Travail. La situation de ce personnel sera la suivante:

A. Il bénéficiera d'une complète immunité pour les actes qu'il aura accomplis en sa qualité officielle et dans les limites de ses attributions. Il restera, par contre, soumis aux lois et à la juridiction locales pour les actes de sa vie privée. Au cas, toutefois, où des mesures judiciaires, de police ou autres, prises à l'égard d'un membre de ce personnel, seraient de nature à entraver la marche normale des services de la Société des Nations, le Département Politique Fédéral, à la demande du Secrétariat général, attirera aussitôt sur ce fait l'attention de l'Autorité compétente, qui en tiendra compte dans la mesure compatible avec l'ordre public.

B. Il sera dispensé de l'obligation de s'annoncer à la police locale et de déposer ses pièces de légitimation. Une liste nominative du personnel de deuxième catégorie, analogue à celle mentionnée plus haut à propos du personnel exterritorial, sera également fournie au

Département Politique Fédéral par le Secrétariat Général et le Bureau international du Travail. Sur la base de cet état, qui devra, comme celui du personnel de première catégorie, rester constamment à jour, des cartes d'identité, de couleur différente de celles du personnel exterritorial, seront délivrées aux intéressés par la Division des Affaires Etrangères.

C. En matière fiscale, le personnel de deuxième catégorie sera, par application de l'arrêté fédéral du 28 septembre 1920 (article 18) et de l'arrêté du Conseil d'Etat du Canton de Genève du 14 juin 1921, exonéré:

- 1° des taxes sur le revenu professionnel (traitements);
- 2° de la taxe sur la fortune (pour autant, du moins, que le montant des revenus n'excédera pas celui du traitement);
- 3° du paiement de l'impôt fédéral de guerre.

D. En matière de douane, le personnel de deuxième catégorie bénéficiera des mêmes facilités de visite que le personnel exterritorial. Il n'aura, par contre, et comme le personnel correspondant à Berne, droit à aucune franchise.

E. En matière de passeports, le personnel de deuxième catégorie recevra, comme, à Berne, le personnel correspondant, le visa officiel (non diplomatique) de la Division des Affaires Etrangères. De même que le visa diplomatique, ce visa est, soit simple, soit permanent, avec même durée de validité maximum.

F. La femme et les enfants des membres du personnel de deuxième catégorie partageront la condition du chef de famille, s'ils vivent avec lui et sont sans profession.

Les dispositions qui précèdent, tant celles relatives au personnel exterritorial que celles applicables au personnel de deuxième catégorie, ne concernent pas le *personnel de nationalité suisse*, dont la situation reste à régler.

Il y a lieu, toutefois, de mentionner dès à présent:

A. Que les ressortissants suisses, fonctionnaires ou employés de la Société des Nations, bénéficient de l'immunité de juridiction pour tous les actes qu'ils accomplissent en leur qualité officielle et dans la limite de leurs attributions;

B. Que ceux d'entre eux qui, par leurs fonctions, se rattachent à la première catégorie ont, s'ils se rendent en mission à l'étranger, droit à un passeport officiel du Conseil Fédéral;

C. Qu'en application de l'arrêté du Conseil d'Etat du Canton de Genève, du 14 juin 1921 ils sont exemptés, dans ce Canton, du paiement de la taxe sur le revenu professionnel, pour les traitements qui leur sont alloués par la Société des Nations.

II. *Locaux, Archives et Courriers*

A. Les locaux dans lesquels les services de la Société des Nations (Secrétariat général et Bureau international du Travail) sont établis (si ce sont des bâtiments entiers, ces bâtiments, y compris leurs jardins et dépendances) seront inviolables; par quoi il faut entendre que nul agent de l'Autorité publique ne devra y pénétrer, pour un acte de ses fonctions, sans le consentement du Secrétariat général ou du Bureau international du Travail.

B. Les archives de la Société des Nations seront inviolables.

C. En application par analogie du droit qu'ont les Missions diplomatiques de correspondre librement avec leur Gouvernement, le Secrétariat général et le Bureau international du Travail auront le droit de faire usage de courriers de Cabinet pour la transmission de leur correspondance officielle à leurs agents à l'étranger (et vice-versa); on voudra bien se référer, à cet égard, à la correspondance échangée entre la Division des Affaires Etrangères et le Secrétariat Général concernant les détails d'organisation du service de courriers Genève-Paris.

D. La Société des Nations bénéficiera d'une entière franchise de douane pour tous objets lui appartenant en propre (non à son personnel) et destinés à l'usage exclusif du Secrétariat Général ou du Bureau international du Travail (mobilier des locaux, matériel et fournitures de bureau, etc.).

III. *Personnalité internationale de la Société des Nations*

Bien que l'article VII du Pacte de la Société des Nations n'ait trait qu'au personnel et aux locaux de la Société, il y a lieu d'admettre qu'en application, sinon de la lettre, du moins de l'esprit du Pacte, la Société des Nations peut revendiquer, en sa faveur, la personnalité internationale et la capacité juridique, qu'elle a droit, en conséquence, à un statut analogue à celui d'un Etat. Il en ressort que la Société des Nations peut prétendre à la même indépendance à l'égard des organes administratifs et judiciaires suisses que les autres membres de la communauté internationale, en sorte qu'elle ne doit pas être actionnée devant les tribunaux suisses sans son consentement (abstraction faite des exceptions consacrées par le droit international, comme, par exemple, en matière d'actions réelles immobilières, etc.).

Toutefois, la Société des Nations, à la différence des autres personnes internationales, n'ayant, faute de territoire, pas de tribunaux à offrir, il en résulte qu'elle ne peut, à l'heure actuelle, être actionnée nulle part sans son consentement. Sans doute, la Société des Nations,

par le fait que son siège est à Genève, peut dès aujourd'hui s'adresser aux tribunaux suisses; il lui suffit, à cet effet, de renoncer à se prévaloir de son extraterritorialité; elle peut le faire, soit expressément, en se portant demanderesse, soit tacitement, en n'élevant pas le déclinatoire d'incompétence. Cependant, le Gouvernement Suisse est de l'avis qu'il serait certainement préférable que la Société, dans son intérêt même, ne se contentât pas de la compétence, pour elle aujourd'hui simplement facultative, des tribunaux suisses, et fût aussitôt que possible choix d'un for judiciaire général; ce choix pourrait d'ailleurs n'être que provisoire. Du moment où la Société des Nations a son siège à Genève, il semblerait naturel que l'élection de for fût faite dans cette ville.

La Société des Nations pouvant d'ores et déjà, si elle le désire, en appeler aux tribunaux suisses, le Gouvernement Fédéral n'a, conséquemment, pas d'offres à faire sur ce point; il se borne à exprimer le voeu de connaître bientôt les propositions que le Secrétariat Général estimerait pouvoir formuler en vue de remédier à ce que la situation actuelle a d'anormal.

Dans l'attente des obligeantes communications que vous voudrez bien nous faire parvenir relativement à ce qui précède, nous saisissons cette occasion pour vous réitérer, Monsieur le Secrétaire général, l'assurance de notre haute considération.

Département Politique Fédéral
(Signée) MOTTA

A l'Honorable Sir ERIC DRUMMOND,
Secrétaire Général de la Société des Nations,
Genève.

GENÈVE, le 24 octobre 1921

Monsieur le Conseiller,

En répondant à votre lettre du 19 juillet B.56/41.D./I/-CA, j'éprouve, pour ma part, la satisfaction de pouvoir constater que les vues du Gouvernement Fédéral suisse, en ce qui concerne les questions des privilèges et immunités diplomatiques, concordent, sur le plus grand nombre des points, avec ma manière de voir.

Il me paraît, en effet qu'un *modus vivendi* provisoire pourra être établi sur la base des propositions du Gouvernement Fédéral suisse et des observations suivantes que je me permets de présenter.

Je partage l'opinion que ce premier arrangement partiel sera constamment revisible à la demande de celle des parties qui le jugera nécessaire.

Pour le moment, on pourra donc considérer comme acquises, les conclusions suivantes:

I. *Personnel.*

Le personnel du Secrétariat Général de la Société des Nations et du Bureau international du Travail sera soumis à un régime analogue, mutatis mutandis à celui appliqué aux membres des Missions diplomatiques accréditées auprès de la Confédération, c'est-à-dire qu'il bénéficiera des mêmes prérogatives et immunités que celles reconnues par le droit international et par la pratique au personnel des Missions diplomatiques.

Par conséquent, les Membres du personnel, qui correspondent à des fonctionnaires publics, jouiront des prérogatives et immunités connues sous le nom d'exterritorialité.

J'aurai l'honneur de présenter au Gouvernement Fédéral suisse une liste nominative des Membres du personnel qui se trouvent dans cette situation et je ne manquerai pas de communiquer de temps à autre, les mutations qui s'y produiraient.

En ce qui concerne les détails mentionnés sous les lettres A et D, F, E, G de cette catégorie, je peux me déclarer complètement d'accord.

Il y a également accord, en ce qui concerne la situation de la 2ème catégorie (non exterritorialité) mentionnée dans la lettre du Gouvernement Fédéral suisse. Toutefois, je me permets de faire remarquer qu'il y aurait peut-être lieu d'établir pour cette catégorie du personnel la même immunité fiscale que celle qui a été établie pour le personnel de 1ère catégorie.

Il y a encore accord pour les questions touchant les locaux dans lesquels les services de la Société des Nations sont établis. Il s'agit, en l'espèce, du bâtiment occupé par le Secrétariat général et de celui occupé par le Bureau international du Travail. Il va sans dire qu'il devra en être également ainsi pour les bâtiments qui seront temporairement occupés, par la Société des Nations, telle que la Salle de l'Assemblée et celle de la Conférence du Travail, pendant la durée des réunions. Si d'autres bâtiments ou terrains seront occupés par la Société des Nations, communication en sera faite au Gouvernement fédéral.

Quant aux propositions faites en ce qui concerne les archives de la Société des Nations, le service des courriers et la franchise de douane pour les objets appartenant à la Société et destinés à l'usage exclusif du Secrétariat général ou du Bureau international du Travail, il n'y a pas d'observations à faire.

Enfin, je me permets d'exprimer mon appréciation, aussi bien en mon nom propre qu'en celui du personnel, de la courtoisie témoignée par le Gouvernement suisse, en ce qui concerne les franchises de douane et les facilités de douanes offertes par le Gouvernement Fédéral suisse au personnel sous les nos. I.E. — et II.D.

Il est bien entendu que la situation du personnel de nationalité

suisse restera à régler. Il est toutefois bien entendu que, dès à présent, les ressortissants suisses, fonctionnaires ou employés de la Société des Nations, bénéficieront de l'immunité de juridiction pour tous les actes qu'ils accomplissent en leur qualité officielle et dans la limite de leurs attributions; que ceux d'entre eux, qui par leurs fonctions, se rattachent à la première catégorie, auront s'ils se rendent en mission à l'étranger, droit à un passeport officiel du Conseil Fédéral et qu'ils seront exemptés du paiement de la taxe sur le revenu professionnel, pour les traitements qui leur sont alloués par la Société des Nations.

En ce qui concerne le dernier point, il me paraît que l'exemption fiscale devrait s'étendre à toute taxation possible pour les traitements alloués par la Société.

La lettre du Gouvernement Fédéral suisse parle également de la personnalité internationale de la Société des Nations. Il ne sera peut-être pas nécessaire d'entrer dans les détails de cette question. Elle ne pourrait pas être résolue définitivement par la correspondance présente. Pour ma part, je partage l'opinion selon laquelle la Société des Nations peut prétendre à la même indépendance à l'égard des organes administratifs judiciaires suisses que les Membres de la communauté internationale, c'est-à-dire qu'elle ne doit pas être actionnée, en principe, devant les tribunaux suisses sans son consentement. Il ne me paraît pas douteux que, le cas échéant, la Société des Nations consentira à reconnaître un forum judiciaire dans l'éventualité d'un litige. Toutefois, il me semble qu'il vaudra mieux qu'elle conserve pour le moment toute liberté en cette matière, ce qui sera, de plus, justifié, parce que jusqu'ici la pratique n'a pas paru soulever d'inconvénients. Les décisions sur ce point pourront être prises par les organes compétents de la Société des Nations, au moment où le cas se présentera.

J'ajoute que, pour ce qui concerne la question des droits, immunités et privilèges diplomatiques, M. le Directeur du Bureau international du Travail, consulté par moi, s'est déclaré d'accord avec mes déclarations et avec le *modus vivendi* acquis, en soulignant toutefois la réserve mentionnée déjà de ma part au commencement de cette lettre, qu'il ne peut s'agir que d'un *modus vivendi* qui sera à tout temps modifiable.

En vous présentant ces observations, je saisis l'occasion pour vous réitérer, Monsieur le Chef du Département Politique Fédéral, l'assurance de ma haute considération.

ERIC DRUMMOND, *Secrétaire Général*

Monsieur le Conseiller Fédéral G. MOTTA,
Chef du Département Politique Fédéral,
Berne.

ANNEX II

THE "MODUS VIVENDI" OF 1926 WITH THE SWISS FEDERAL COUNCIL

COMMUNICATIONS FROM THE SWISS FEDERAL COUNCIL CONCERNING THE DIPLOMATIC IMMUNITIES TO BE ACCORDED TO THE STAFF OF THE LEAGUE OF NATIONS AND OF THE INTERNATIONAL LABOUR OFFICE ¹

*Note by the Secretary-General, Submitted to the Council on
September 20, 1926*

Geneva, September 18, 1926

The Secretary-General has the honour to submit to the Council the text of a new *modus vivendi* concerning the diplomatic immunities of the staff of the League organisations at Geneva. This text has been accepted both by the Federal Government and by the Secretary-General and the Director of the International Labour Office.

I

The Swiss Federal Government recognises that the League of Nations, which possesses international personality and legal capacity, cannot, in principle, according to the rules of international law, be sued before the Swiss Courts without its express consent.

II

The premises in which the services of the League of Nations (Secretariat and International Labour Office) are installed (in the case of buildings entirely occupied by League offices, the buildings themselves, together with gardens and annexes) are inviolable, that is to say, no agent of the public authority may enter them, in the exercise of his duties, without the consent of the Secretariat or of the International Labour Office.

III

The archives of the League of Nations are inviolable.

¹ *Official Journal*, 1926, pp. 1422-24.

IV

The Secretary-General of the League of Nations and the Director of the International Labour Office are entitled to use couriers for the reception and despatch of official correspondence with the Members of the League of Nations and its agents outside Switzerland.

V

Customs exemption is granted to the League of Nations in respect of all objects, whether intended to form an integral part of a building or not, which are the absolute property of the League and are destined for its exclusive use.

VI

The League of Nations shall enjoy complete fiscal exemption in respect of its bank assets (current and deposit accounts) and its securities.

In particular, it shall be exempted from the stamp duty on coupons instituted by the Federal Law of June 25th, 1921. The exemption shall be effected by the repayment to the League of Nations of the duty levied on its assets.

VII

Subject to the provisions of Article IX below, officials of the organisations of the League of Nations at Geneva who are members of the staff of the first category or extra-territorial staff shall enjoy immunity from civil and criminal jurisdiction in Switzerland, unless such immunity is waived by a decision of the Secretary-General or of the Director of the International Labour Office.

The members of the staff of the second category shall enjoy the same privileges in respect of acts performed by them in their official capacity and within the limits of their functions. They shall remain subject to local laws and jurisdiction in respect of acts performed by them in their private capacity.

It is clearly understood, however, that the organisations of the League of Nations at Geneva will endeavour to facilitate the proper administration of justice and execution of police regulations at Geneva.

VIII

Officials of the organisations of the League of Nations who are members of the staff of the first category enjoy fiscal immunity. Consequently, they are exempted, in accordance with international practice, from all direct taxes, with the exception of the charges

attaching to immovable property (the land tax). They are liable for the payment of indirect taxes and charges. The expression "direct taxes" shall be understood to mean taxes which are levied directly upon the taxpayer. "Charges" — whatever the expression employed in the regulations governing the matter may be — shall only be understood to mean payments in return for the rendering of a special and definite service by the administration to the person who pays them, together with those which are paid in order to cover special expenditure necessitated by an act of the taxpayer.

Members of the staff of the second category are exempted: (1) From the tax (*taxe*) on salary (*revenu professionnel*); (2) From the tax (*taxe*) on capital (*fortune*) or income (*revenu*); (3) From the Emergency Federal War Tax.

IX²

In the case of members of the staff of Swiss nationality, the following exceptions are instituted:

1. Officials of Swiss nationality may not be sued before the local courts in respect of acts performed by them in their official capacity and within the limits of their official duties.
2. The salaries paid to them by the League of Nations are exempted from cantonal and municipal direct taxes.

X

The Customs examination of packages, etc., addressed to the officials of the organisations of the League of Nations shall be effected in accordance with the regulations (*prescriptions*) the text of which was communicated to the Secretary-General of the League by the Head of the Federal Political Department on January 10th, 1926.

XI

If the exigencies of training and the interests of the country permit, exemptions from or postponements of military service shall be granted to officials of Swiss nationality incorporated in the Federal Army in cases in which their compliance with an order calling them up for military service would be likely seriously to interfere with the normal working of the services of the League.

XII

Correspondence relating to the application of the rules of the *modus vivendi* between the organisations of the League of Nations

² As regards the Federal War Tax, see annexed note.

and the Swiss authorities shall be exchanged through the intermediary of the Federal Political Department, except in cases in which some other procedure has been prescribed.

XIII

The present provisions complete or summarise, but do not abrogate, the rules previously established by an exchange of notes between the organisations of the League of Nations and the Federal Political Department.

XIV

As long as the present arrangement remains in force, the examination of the legal arguments set forth in the notes of February 24th and March 5th, 1926, shall not be proceeded with.

The above rules of the *modus vivendi* can only be modified by agreement between the organisations of the League of Nations and the Federal Political Department. If, however, an agreement cannot be reached, it shall always be open to the Federal Government or to the organisations of the League of Nations to denounce the whole or part of the rules of the *modus vivendi*. In this case, the rules mentioned in the denouncement shall remain in force for one year from the date of such denouncement.

Note concerning the Federal War Tax

(Members of the Staff of Swiss Nationality)

As regards the exemption from the Federal War Tax granted to members of the staff of Swiss nationality, the present position is as follows:

A letter of July 17th, 1926, from the Federal Political Department shows that the Federal Council is prepared to exempt from this tax the salary of officials of Swiss nationality until the expiration of the contracts of service which the persons concerned at present hold and which make provision for a salary payable free of taxes. By means of this temporary exemption, the Federal Council desires to prevent the possibility of the payment of the Federal War Tax resulting, through the operation of the clauses of the contracts in force, in imposing, even indirectly any charge upon the budget of the League of Nations. In view of the character and special object of the Federal

War Tax and certain considerations of principle, the Federal Council does not feel able to contemplate permanent exemption.

As the Secretary-General has accepted the arrangement proposed by the Federal Council as regards the contracts at present in force, but considers it necessary to give further consideration to the various legal and administrative difficulties which might arise from differentiations in contracts, a final solution has not up to now been reached.

*Amendment to the Second Sentence of Article VIII of the "Modus Vivendi" Which Came into Force on April 24, 1928*³

(Additions to the original text in italics)

"Consequently, they are exempted, in accordance with international practice, from all direct taxes, with the exception of charges attaching to immovable property (the land tax) and *death duties to which they may be liable as heirs or legatees of a person who has died in Switzerland or as beneficiaries under a donatio inter vivos the donor of which is domiciled in Switzerland, it being understood that the transfer mortis causa or by donatio inter vivos of property belonging to officials enjoying diplomatic privileges and immunities shall continue to be exempted from all taxes; they are liable for . . .*" etc. *

³ *Official Journal*, 1928, p. 839.

Appendices to Annexes I and II

APPENDIX 1

COMMUNICATIONS FROM THE SWISS FEDERAL COUNCIL CONCERNING THE DIPLOMATIC IMMUNITIES TO BE ACCORDED TO THE STAFF OF THE LEAGUE OF NATIONS¹

Geneva, February 15th, 1926

Note by the Secretary-General:

According to Article 7 of the Covenant, officials of the Secretariat of the League of Nations and officials of the International Labour Office enjoy diplomatic privileges and immunities. Paragraph 4 of this Article contains an explicit provision to this effect and is worded as follows:

Representatives of the members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

By correspondence between the Swiss Federal Government and the League a *modus vivendi* was established with regard to the enjoyment of these privileges by the staff both of the Secretariat and of the International Labour Office.

This arrangement bears on a large number of different questions such as extritoriality, immunity from jurisdiction, and Customs and fiscal questions, and has not, generally speaking, given rise to any insuperable difficulties in practice.

As regards the details of this *modus vivendi*, the Secretary-General ventures to refer you to the circular concerning the rights and duties of the staff of the Secretariat of the League arising under Article 7 of the Covenant (Circular of October 28th, 1922), copy of which is attached.

On one point, however — the status of the staff of Swiss nationality — the *modus vivendi* has given rise to practical difficulties of a somewhat serious kind, particularly as regards the exemption from taxation of salaries granted by the League of Nations to staff of Swiss nationality, a point on which the Secretary-General has felt bound to lay particular stress.

The Secretary-General has the honour to communicate herewith

¹ League of Nations document C.66.1926.V.

copy of the official correspondence exchanged between the Federal Council and himself on this subject. It will therefore hardly be necessary to give a detailed account of the arguments advanced by the Federal Government and the League of Nations.

The Secretary-General would merely emphasise the fact that the fiscal immunity of the staff of Swiss nationality was referred to by the Federal Government in its letter of July 19th, 1921, in so far as the taxes of the Canton of Geneva were concerned. This immunity had, moreover, been recognised by the Conseil d'Etat of the Republic and Canton of Geneva in an Ordinance dated June 14th, 1921 (copy of which is annexed).

In actual practice no difficulties arose in this connection for several years. In 1923, however, the legislative authorities of the Republic and Canton of Geneva adopted a law concerning public contributions, Article 7 of which abolished the fiscal immunity for officials of Swiss nationality. The Secretary-General had, however, received no communication from the Federal Government which could lead him to suppose that any change in the *modus vivendi* in force had been contemplated.

Towards the end of 1924, and again at the beginning of 1925, the Secretary-General was informed by the staff of Swiss nationality that the Treasury authorities of the Canton of Geneva were preparing to claim payment of the tax on their salaries.

On February 19th, 1925, the Secretary-General felt obliged to write to the Federal Political Department and ask for explanations, referring to the arrangement (*modus vivendi*) which had been reached between the Federal Council and the League of Nations in 1921, an arrangement which, in fact, had been broken by the unilateral decision of the Cantonal Government.

In 1925 letters, which are also reproduced hereinafter, were exchanged between the Federal Government and the Secretary-General, and this correspondence eventually led to direct negotiations, which took place in Geneva in December 1925. In the course of these negotiations, several questions concerning the exercise of diplomatic privileges which had remained pending were settled in principle, although certain points in regard to the execution of the settlement remain outstanding; but the disagreement regarding the question of the fiscal immunity of Swiss officials remained. During the conversations in December 1925, it was agreed that the representatives of the Federal Political Department should inform the Federal Council of the result of the negotiations, and that, if no agreement could be reached on the only question which remained outstanding, the Secretary-General would lay the matter before the Council.

In a letter dated January 22nd, 1926, the Head of the Federal Political Department informed the Secretary-General that the Federal Council, despite its sincere desire to meet as far as possible the requests formulated by the organisations of the League of Nations, did not feel that it could, as regards the taxation of the staff of Swiss nationality, modify the point of view which it had already adopted.

In a letter dated January 28th, 1926, the Acting Secretary-General acknowledged the receipt of this letter and informed the Federal Government that the question of the fiscal immunity of officials of Swiss nationality would be included in the agenda of the Council Session which was to take place in March.

The Secretary-General would add that the position of the officials of the International Labour Office was the same as that of the officials of the Secretariat.

Consequently, the Secretary-General has the honour to refer the matter to the Council with the request that it should examine the correspondence between the Federal Government and the League of Nations as set out hereinafter, and should take such decision in the matter as it may deem suitable.

EXTRACTS FROM THE MINUTES OF THE CONFERENCE HELD AT BERNE ON
JANUARY 18TH AND 19TH, 1921, BETWEEN REPRESENTATIVES OF
THE SECRETARY-GENERAL OF THE LEAGUE OF NATIONS AND OF THE
FEDERAL POLITICAL DEPARTMENT WITH A VIEW TO THE CONCLU-
SION OF AN AGREEMENT ON THE APPLICATION OF ARTICLE 7,
PARAGRAPH 4, OF THE COVENANT OF THE LEAGUE

[*Translation*]

M. DINICHERT proceeded to examine paragraph XI of the draft report concerning the position of League officials of Swiss nationality.

He pointed out that the Federal Council was of opinion that Swiss citizens, whatever their position might be as agents of the League of Nations, continued to be subject in Geneva to Swiss laws in every respect (jurisdiction, civil rights, rights and duties of the citizen, particularly military service, taxation, etc.). To argue that Swiss nationals should be exempted from jurisdiction and in general accorded extraterritoriality on the soil of their own country would be to place them above the law. They might, however, be granted full immunity in all official acts in which only the Secretariat-General was concerned.

Dr. VAN HAMEL thought that the difference between the Federal Council's point of view and that of the Secretary-General was not, perhaps, as great as at first appeared.

What the Secretary-General desired for agents of Swiss nationality was:

1. That they should be entirely independent of the local authorities as regards the exercise of their duties; that meant that should there be any conflict between these duties and Swiss jurisdiction, the latter must yield to the requirements of the official work of the agent which should have precedence;
2. Fiscal immunity which should, however, apply only to salaries;
3. Recognition of full equality of status as between Swiss and other officials.

As regards immunity from jurisdiction, the Secretary-General should be able, as in the case of non-territorial technical staff, to obtain suspension of judicial proceedings when such proceedings might hinder the work of the Secretariat.

M. DINICHERT proceeded to consider the question of the *fiscal immunity* of officials of Swiss nationality. From the legal point of view the situation was clear. As Swiss nationals domiciled on the territory of the Confederation, the persons concerned were subject to taxation; the argument based on the international origin of their salary was not very convincing; it had never been advanced at Berne on behalf of the officials of the international bureaux. Neither from the point of view of equity would the taxation of Swiss nationals appear to be very harsh, in view of the fact that they were in their own country, nor did taxation in any way infringe upon the independence of the League of Nations. The possible granting of exemption might, however, be defended on the ground that it was a measure of courtesy towards the League of Nations, although as a matter of fact it would only be Swiss nationals who would be liable to taxation. Regarded from this point of view, such immunity presented no difficulties so far as the principle was concerned and the Federal Council would take it into consideration. He foresaw, however, that there would be considerable opposition and he did not feel that he was in a strong position to refute arguments to the contrary.

M. HUBER pointed out in this connection that, in the case of the Permanent Court of International Justice at The Hague, it had been admitted in the Commission (summary of the discussion by M. Costa, Acting-President) that the League of Nations could not trespass on

the fiscal sovereignty of the States Members, so that the League itself would if necessary have to indemnify the judges who were taxed.

M. DINICHERT observed that in this case also the question did not affect Swiss nationals only — it concerned all agents who, though living outside their country, were liable to taxation therein.

Dr. VAN HAMEL explained that at the present time, owing to the principle of the territoriality of taxation, no foreign State taxed at Geneva its nationals who were officials of the Secretariat.

M. HUBER objected that, owing to the present budgetary crises, States were becoming more and more inclined to abandon the system of the territoriality of taxation and were seeking to levy taxes on their nationals abroad. The question might therefore arise.

Dr. VAN HAMEL said he was fully aware of this tendency. He had already had to negotiate with the Government of the United States, which was endeavouring to tax American citizens who were officials of the Secretariat. He was determined to oppose these attempts. The question had already arisen in London and the British Government had immediately consented to exempt the salaries of British subjects from taxation.

EXTRACT FROM A LETTER FROM THE DIRECTOR OF THE LEGAL SECTION
TO THE CHIEF OF THE DIVISION OF FOREIGN AFFAIRS OF
THE FEDERAL POLITICAL DEPARTMENT

Geneva, March 18th, 1921

[*Translation*]

After examining the minutes of the conferences which we held at Berne in order to exchange views on the putting into force of Article 7, paragraph 4, of the Covenant, I venture to transmit to you herewith a summary of the various points on which an agreement seems to have been reached. I think that results might now be obtained and that the Federal Government might see its way to sending a letter to the Secretary-General assuring him that the principles laid down in the Covenant which are indispensable for the proper working of the Secretariat and the International Labour Office will be applied. This letter might include the following points:

After this exchange of letters the following points would remain pending:

The position of Swiss nationals: On this point the Secretary-General still feels that he must request, for these members of the Secretariat and the International Labour Office also, complete inviolability in virtue of the terms of the Covenant and the nature of the duties entrusted to these officials. The question might perhaps be dealt with in a special exchange of notes; in the note which the Federal Council might send us, the Council would merely express its reservations.

.
(Signed) VAN HAMEL

Director of the Legal Section

**EXTRACT FROM A LETTER FROM THE HEAD OF THE FEDERAL POLITICAL
DEPARTMENT TO THE SECRETARY-GENERAL**

Berne, July 19th, 1921

[Translation]

The Swiss Federal Government has been particularly happy to note that, as a result of the conferences held at Geneva and Berne a few months ago, and subsequent correspondence, the views of the Secretary-General of the League of Nations concerning the application of Article 7, paragraph 4, of the Covenant now coincide on many points with its own views on the subject.

On the basis of the results obtained in our conversations, the Federal Council has instructed us to transmit to you the following proposals regarding the points on which an agreement has been reached. These proposals might form the basis of an initial and provisional *modus vivendi* for the League of Nations at Geneva. This partial settlement, which may be subject to revision at any time at the request of either party, could easily be completed subsequently as each point still under discussion was settled. The proposals in question are as follows:

I. Staff

The staff of the Secretariat of the League of Nations and the International Labour Office shall be accorded the same prerogatives and immunities as are conferred by international law and practice on the staff of diplomatic missions; it shall accordingly be placed on the same footing, *mutatis mutandis*, as the members of diplomatic missions accredited to the Confederation.

The above provisions, both those concerning extra-territorial staff and those applicable to staff of the second category, do not apply to *staff of Swiss nationality*, the position of the latter still remaining unsettled.

It can, however, be stated now:

A. That Swiss nationals who are officials or employees of the League of Nations will be immune from jurisdiction in respect of acts accomplished by them in their official capacity and within the limits of their duties;

B. That those who by reason of their duties are classed in the first category shall be entitled when proceeding abroad on a mission to an official passport of the Federal Council;

C. That in application of the Ordinance of the Conseil d'Etat of the Canton of Geneva of June 14th, 1921¹, they shall be exempt, in this Canton, from payment of the tax on earned income in respect of the salaries granted to them by the League of Nations.

(Signed) MOTTA

Annex

ORDINANCE OF THE CONSEIL D'ETAT OF JUNE 14TH, 1921

Republic and Canton of Geneva

Extract from the Archives of the Conseil d'Etat

(June 14th, 1921)

The CONSEIL D'ETAT,

In view of the circular of February 14th, 1921, and the letter of May 12th, 1921, from the Federal Political Department concerning the application to members of the League of Nations of the principles of extritoriality and fiscal immunity as defined in Article 7 of the Treaty of Versailles,

Whereas the State of Geneva is concerned only with fiscal immunity:

Subject to the approval of the Federal Council;

Upon the motion of the President:

DECREES:

1. The foreign staff of the League of Nations enjoying extritoriality shall be exempt in the Canton of Geneva from the payment:

¹ The text of the Ordinance of the Conseil d'Etat of June 14th, 1921, is annexed hereto.

150 *Immunities and Privileges of International Officials*

- (a) of the tax on earned income (salaries);
- (b) of the tax on capital or income;
- (c) of subsidiary or luxury taxes, except the dog tax and shooting and fishing licences.

2. The foreign staff of the League of Nations not enjoying extraterritoriality and the auxiliary personnel (technical and manual) shall be exempt in the Canton of Geneva from the payment:

- (a) of the tax on earned income (salaries);
- (b) of the tax on capital.

3. The Swiss staff of the League of Nations of both categories shall be exempt in the Canton of Geneva from the payment of the tax on earned income as regards salaries granted by the League of Nations.

4. The immovable property of the League of Nations used for the various services shall be exempt from taxation.

All these provisions shall apply to cantonal and communal taxation.

These prerogatives shall extend under the same conditions to the staff of the International Labour Office and, provisionally, to the staff of the League of Red Cross Societies.

Certified:
(Signed) THÉODORE BRET
Chancellor

EXTRACT FROM A LETTER FROM THE SECRETARY-GENERAL TO THE
HEAD OF THE FEDERAL POLITICAL DEPARTMENT

Geneva, October 24th, 1921

[Translation]

In reply to your letter B. 56. 41. D. I/CA of July 19th, I, for my part, am glad to know that the views of the Swiss Federal Government regarding the questions of diplomatic privileges and immunities coincide on most points with my own.

Indeed, it seems that it will be possible to establish a provisional *modus vivendi*¹ on the lines of the Swiss Federal Government's proposals and the following observations which I venture to offer.

¹ The circular distributed to officials of the Secretariat concerning this *modus vivendi* is annexed hereto.

I concur in the view that this first partial arrangement may be revised at any time at the request of either party.

For the present, therefore, the following conclusions may be regarded as agreed upon.

1. Staff

The staff of the Secretariat of the League of Nations and the International Labour Office shall be placed on the same footing, *mutatis mutandis*, as the members of diplomatic missions accredited to the Confederation, that is to say, it shall be accorded the same prerogatives and immunities as are conferred by International Law and practice on the staff of diplomatic missions.

Consequently, the members of the staff whose rank corresponds to that of public officials shall enjoy the prerogatives and immunities which constitute what is known as exterritoriality.

It is understood that the position of staff of Swiss nationality still remains to be settled. It is, however, understood that Swiss nationals who are officials or employees of the League of Nations will be immune from jurisdiction in respect of acts accomplished by them in their official capacity and within the limits of their duties; that those who by reason of their duties are classed in the first category shall be entitled when proceeding abroad on a mission to an official passport of the Federal Council and that they shall be exempt from the payment of the tax on earned income, in so far as regards the salaries granted to them by the League of Nations.

With regard to the last point, I think that the salaries granted by the League of Nations should be exempted from every possible kind of taxation.

(Signed) ERIC DRUMMOND
Secretary-General

Annex

Geneva, October 28th, 1922

**CIRCULAR NO. 316 REGARDING THE RIGHTS CONFERRED AND THE
OBLIGATIONS IMPOSED UPON MEMBERS OF THE SECRETARIAT OF
THE LEAGUE OF NATIONS BY ARTICLE 7 OF THE COVENANT**

The arrangements required to give effect to Article 7 of the Covenant have now been duly completed with the Swiss authorities. This

Circular is accordingly issued for the purpose of calling the attention of the staff of the Secretariat to the special status of the officials of the League of Nations, and of supplying them with the necessary information regarding the diplomatic privileges and immunities to which they are entitled.

The Secretary-General is confident that the officials of the Secretariat will always scrupulously observe the provisions set out below, and that they will constantly bear in mind the obligations which their privileged position imposes upon them. He would further remind the members of the staff that, notwithstanding the immunities which they enjoy, they are bound to observe the laws and regulations in force in Switzerland and that, in particular, they must scrupulously comply with all provisions regarding public safety and the maintenance of order (traffic regulations, police regulations for streets and public places, etc.).

I. Officials of Nationality other than Swiss

The staff is divided into two categories:

- A — Members of the First Category (in possession of pink identity cards).
- B — Members of the Second Category (in possession of blue identity cards).

A. Members of the First Category: "Extra-territorial Staff"

This part of the staff enjoys in principle the same diplomatic privileges and immunities as are granted to the Diplomatic Corps at Berne, *i.e.*:

(1) Immunity from civil and criminal jurisdiction in Switzerland unless such immunity is waived. Should the question of waiver arise, the Secretary-General should be consulted beforehand by the official concerned.

It need hardly be added that administrative or disciplinary action involving, in certain contingencies, even the dismissal of the official may be taken, if necessary, by the Secretary-General.

This immunity does not preclude the lodging of a complaint with the official's national authorities should such action appear desirable, although it is of course always understood that the officials of the League of Nations are not in any way responsible, as regards their duties, to any national government.

(2) Fiscal immunity: general exemption from direct personal taxes and taxes on luxuries, general taxes on property whether in the form of capital or income, and from war-taxes (*décimes de guerre*).

By a Decree dated June 14th, 1921, of the Council of State of the Republic and Canton of Geneva, the members of the first category of the staff are exempt within the Canton of Geneva from the payment of

- (a) The tax on *revenu professionnel (traitement)*, i.e., earned income (salaries).
- (b) Tax on *fortune or revenu*, i.e. property or income.
- (c) Taxes *accessoires or somptuaires*, i.e., incidental taxes and taxes on luxuries, not including shooting and fishing licences.

The staff of the Secretariat will, moreover, be exempt from the Emergency Federal War-Tax. (Federal Decree dated September 28th, 1920.)

All charges due to the Swiss authorities for services rendered must be paid should application for such payment be made. For example, the cost price of motor-car and bicycle plates, charges for inspecting motor-cars and boats, registry office fees and Chancellory fees (legal documents, issue of deeds), fees for registration of marriage particulars and for entries in the land register, and Court fees may be mentioned.

(3) Privileges regarding Customs and visa formalities:

The following will be permitted to introduce free of Customs duty all articles intended for their personal use: the Secretary-General of the League of Nations, the Assistant Secretary-General, Under-Secretaries-General and Directors. The baggage of these officials will also, in principle, not be subject to examination by Customs officers.

The members of the first category of the staff, excluding the Secretary-General, the Assistant Secretary-General, Under-Secretaries-General and Directors, will be entitled to introduce free of duty only new articles required when they first establish a home (*première installation*), etc. The formalities connected with the examination of the luggage of such officials by Customs officers will, however, be limited to what is absolutely necessary. The members of this category of the staff will be entitled to diplomatic visas on their passports.

(4) Permits for temporary or permanent residence (*permis de séjour et d'établissement*).

Members of the staff will be exempt from the obligation of reporting in person to the police authorities directly and submitting their identity papers.

Any person who claims exemption from the obligation of reporting to the police and submitting his papers, but whose name does not appear in the official lists communicated by the Secretariat, will be called upon to furnish evidence of his status as an official. In such a case the identity card issued by the Political Federal Department, or an official statement on the part of the Secretariat, will be regarded as sufficient evidence.

The wife, children, parents and parents-in-law of an official in this category will enjoy the same privileges as the official in regard to *permis de séjour et d'établissement*, provided they reside with the official and do not exercise any vocation.

Domestic employees of this category of the staff (governesses, housekeepers, domestic servants, private secretaries) will be subject to the Federal and Cantonal regulations with regard to temporary or permanent residence.

Only the domestic employees of the high officials mentioned below will provisionally be exempt from the obligation of reporting in person to the police authorities: the Secretary-General, the Assistant Secretary-General, Under-Secretaries-General and Directors.

The wife and children of an official of the first category will, as a general rule, be granted the same status as the head of a family, provided they reside with him and do not exercise any vocation in Geneva.

B. Members of the Staff of the Second Category

(a) Complete immunity in respect of acts performed in their official capacity and within the limits of their duties.

They will, however, be subject to local laws and jurisdiction in respect of acts performed in their private capacity.

(b) Permits of residence (*permis de séjour*). Officials of this category will be exempt from the obligation of reporting in person to the police authorities and submitting their identity papers.

The wife, children, parents and parents-in-law of a member of the staff of the second category will enjoy the same privileges, provided they reside with him and do not exercise any vocation.

What is said above with regard to officials of the first category whose names do not appear in the list of the staff, applies equally to the second category of the staff.

(c) Fiscal immunity: In accordance with the Federal Decree, dated September 28th, 1920, and the Decree dated June 14th, 1921, of the Council of State of the Canton of Geneva, staff of the second category will be exempted from the payment of:

- (1) Tax on *revenu professionnel (traitement)* i.e. earned income (salaries);
- (2) Tax on *fortune*, i.e. property.

The members of this category will, moreover, be exempted from payment of the Emergency Federal War-Tax imposed by the Federal Decree dated September 28th, 1920.

The same regulations as for officials of the first category will apply to payment of charges due to the Swiss authorities for services rendered (see above).

The wife and children of a member of the staff of the second category will, as a general rule, be granted the same status as the head of the family, provided they reside with him and do not exercise any vocation in Geneva.

II. *Swiss Members of Staff*

The position of the Swiss members of the staff is now under discussion between the Federal Authorities and the Secretary-General. The following arrangements have been agreed upon as a purely provisional measure:

Members of the Secretariat who are Swiss nationals will be regarded by the Swiss Government as occupying a position distinct from that of the so-called "extra-territorial" staff and the second category of staff. As a general rule, therefore, they will not enjoy the same advantages and privileges as attach to those grades.

It should, however, be mentioned that Swiss nationals who are officials of the League of Nations will enjoy the following privileges:

- (1) Immunity from jurisdiction in respect of acts performed in their official capacity and within the limits of their duties;
- (2) Exemption, under the Decree of the Council of State, dated June 14th, 1921, within the Canton of Geneva, from the payment of the "taxe sur le revenu professionnel" on the salary which they receive from the League of Nations.

Further, subject to the fulfilment of all the formalities prescribed in the legal provisions relating to votes and elections (deposit of certificates of origin, declaration, etc.), they will be exempt from the obligation to take out a *permis de séjour* or a *permis d'établissement*.

III. *Traffic Regulations and Public Safety*

The *Règlement général* (General Regulations) for traffic and public safety will apply to all officials and employees of the League of Nations.

Officials of the Secretariat, to whatever class they may belong, will therefore be bound, particularly for purposes of travel in the Canton of Geneva and throughout Switzerland, to carry out the usual formalities (driving tests and inspection of cars in the case of motor-cars, inspection of boats, number-plates for motor-cars and bicycles).

It is understood, however, that officials holding international motor-car licences issued by their national authorities, or driving licences from their national authorities which entitle them to international motor-car licences without further driving test, may, on presentation of these documents, when such documents have been issued after a driving test has been passed before the national authority, take out the Geneva licence without a further driving test.

Cars belonging to officials of the first category will be provided with a distinctive mark in addition to the usual number-plate; this distinctive mark will, however, be optional.

IV. *Offences*

The extra-territorial staff (Category I) will not be liable to appear before the Swiss Courts. If, however, breaches of the Swiss laws and regulations should take place, the Secretary-General will not fail to take administrative or disciplinary measures, including dismissal if necessary, against the delinquents.

V. *Miscellaneous*

Officials of the League of Nations are particularly requested (though no arrangement has been made on this subject with the Federal or the Cantonal Government) to take every precaution to avoid incurring, by contract, any liability for the fulfilment of obligations which might be incompatible with their position in the Secretariat at Geneva.

It seems desirable, for instance, that a special clause should be inserted in leases to provide for the cancellation of the lease as a result of an unexpected departure, whether due to removal of the seat of the League of Nations outside the Canton of Geneva or to the despatch of the official on other League of Nations duty, or in case of death or dismissal of the lessee.

Lists of members of the staff enjoying diplomatic immunities will be drawn up from time to time by the Establishment Office. These lists will be sent to the authorities at Berne, who will circulate them

to the various administrative services of the Confederation and the Canton of Geneva.

As it is highly desirable that the lists in the possession of the Swiss Authorities should be as complete as possible, officials of the Secretariat are particularly requested to keep the Establishment Office informed of alterations, changes of address, etc.

(Signed) ERIC DRUMMOND

EXTRACT FROM A LETTER FROM THE DIRECTOR OF THE LEGAL
SECTION TO THE HEAD OF THE DIVISION FOR FOREIGN AF-
FAIRS OF THE FEDERAL POLITICAL DEPARTMENT

Geneva, August 9th, 1922

[Translation]

Among the questions which have not yet been settled in the *modus vivendi* concerning the position of the staff of the League of Nations which the Federal Council outlined in its letter of July 19th, 1921, one of the most important — in view of the numerous Swiss staff employed by the League of Nations — is undoubtedly that of the exemption of salaries of officials of Swiss nationality from taxation.

The Conseil d'Etat of the Republic and Canton of Geneva has already settled this question in a most courteous and friendly manner by granting exemption in its Ordinance of June 14th, 1921.

The other cantons have not yet, however, adopted similar measures. There are, moreover, certain fiscal laws of the Confederation — in particular, the law concerning the extraordinary war-tax — which, being levied on earned income, might affect the salaries of a large number of officials of the Secretariat of the League of Nations and the International Labour Office. I therefore venture to draw your attention to the desirability of settling this question without delay and in the same spirit as that in which the *modus vivendi* at present in force was established.

For this purpose I should like to state the reasons which, in my opinion, warrant exemption from all taxation levied on the salaries received by Swiss officials. These reasons are quite distinct from the question as to whether — and, if so, to what extent and in what manner — the Confederation should accord to these officials the privileges and immunities laid down in Article 7 of the Covenant of the League of Nations.

The Secretariat of the League of Nations and the International

Labour Office are obliged, in order to carry on their work, to recruit their staff principally in certain countries. On the one hand, the official languages necessitate the presence of a very large proportion of French and English-speaking officials. Moreover, in conformity with an Assembly resolution, the subordinate staff must, as far as possible, be engaged locally, that is to say, at the seat of the League. Consequently, those States which are favoured by one or other of the above considerations — and Switzerland is favoured by both — possess in the two administrations a number of nationals far in excess of those of other members of the League. If these States were to tax the salaries of their nationals it would in effect be equivalent to their obtaining a refund of part of their contribution to the expenses of the League and such refund would finally result in a modification to their advantage — consequently to the disadvantage of other States — of the proportion fixed in the allocation of expenditure.

The levying of taxes on the salaries of officials of the League of Nations might even lead to an increase in the budget of the League; for the League of Nations might find itself obliged to grant compensation to the officials whose salaries were taxed. That obviously would mean, in the long run, that such increased expenditure would have to be borne by just those other Members which are already less favoured as regards the recruitment of staff.

The above considerations are of a nature, I think, to encourage Members to forgo all taxation based on the salaries of their nationals employed by the League of Nations. That, indeed, is what has been decided by several countries, including Great Britain, who had exempted from income tax the salaries of her nationals when the Secretariat of the League of Nations and the International Labour Office were established in London.

I am sure that the Federal Council, in view of these considerations, will be good enough definitely to forgo the taxation of the salaries of Swiss officials of the League.

I am aware that there are other international organisations whose headquarters are in Switzerland and whose officials of Swiss nationality are taxed. I do not, however, think that this circumstance can be regarded as a reason for applying similar measures to the Swiss staff of the League. There is, indeed, an essential difference between the organisation of the institutions of the League and that of the international bureaux established at Berne. These bureaux are placed under the authority of the higher administration of the Swiss Confederation and work under its supervision. The Confederation possesses, therefore, with regard to the international bureaux whose

headquarters are in Switzerland, certain prerogatives which are inherent in the responsibility she has assumed; but no such prerogatives exist in respect of the League of Nations. No single member of the League exercises individually any authority or supervision. The institutions of the League are administered by the international organs subject to authority and supervision of a strictly international character.

I should be glad if you would use your influence with the Federal Council to obtain a satisfactory agreement on the questions referred to above.

(Signed) VAN HAMEL
Director of the Legal Section

EXTRACT FROM A LETTER FROM THE HEAD OF THE FEDERAL POLITICAL
DEPARTMENT TO THE SECRETARY-GENERAL

Berne, December 8th, 1922

[*Translation*]

In your letter of November 22nd last¹, in continuation of your letter of August 9th, 1922, you drew our attention to the special position from a fiscal point of view of League staff of Swiss nationality, and requested us to include the Federal war-tax and the military tax among those taxes from which the salaries of the Swiss officials are at present exempt.

We have noted with interest the further reasons which you adduce in favour of the entire exemption of the salaries of Swiss staff from taxation. Though the granting to Swiss nationals on Swiss territory of privileges founded on the conception of extritoriality must be regarded as out of the question, this is not necessarily the case with fiscal exemptions which we are asked to grant as a measure of courtesy towards the League of Nations itself, particularly when it is submitted to us that a refusal of such exemption might give to Switzerland — by reason of the fact that the League has established its headquarters at Geneva — some apparent financial advantage over the other Members of the League.

We have given most careful consideration to your requests, in consultation with the other administrations concerned, and we will

¹ The letter of November 22nd concerns the military tax, and is not reproduced here.

doubtless shortly be in a position to lay before the Federal Council proposals regarding the extraordinary Federal war-tax.

(Signed) MOTTA

EXTRACT FROM A LETTER FROM THE SECRETARY-GENERAL TO THE
HEAD OF THE FEDERAL POLITICAL DEPARTMENT

Geneva, January 22nd, 1923

[*Translation*]

I have the honour to acknowledge receipt of your letter No. B.56/41. D.I.-F.A. of December 8th, 1922, in which you inform me of the Federal Government's views on certain fiscal questions concerning the League's staff of Swiss nationality, to which I referred in my letters of August 9th and November 10th, 1922.

I am glad to observe that, as regards the complete exemption from taxation of the salaries of the Swiss staff, you seem to share my views, and I have noted that you intend to communicate to me shortly the Federal Council's decision on this subject.

For the Secretary-General:

(Signed) VAN HAMEL

Director of the Legal Section

LETTER FROM THE ACTING SECRETARY-GENERAL TO THE HEAD OF
THE FEDERAL POLITICAL DEPARTMENT

Geneva, February 19th, 1925

[*Translation*]

I have the honour to draw your attention to the following question:

Several officials of the Secretariat of the League of Nations and International Labour Office of Swiss nationality have recently been asked by the authorities of the Canton of Geneva to pay income tax on the salaries granted them by the League of Nations or the International Labour Office.

I venture to draw your attention to the fact that, by your letter B.56/41.D/1 of July 19th, 1921, and my reply of October 24th,

1921, an agreement was reached between the Federal Council and the League of Nations to the effect that staff of Swiss nationality, in the Secretariat or the International Labour Office, should be exempt from the payment of taxes on earned income in so far as regards the salaries granted to them by the League of Nations or the International Labour Office.

In virtue of this agreement, I venture to request the Federal Council to take the necessary steps to ensure that the Geneva authorities shall adhere to this rule and refrain from taking any steps contrary thereto.

(Signed) AVENOL
Acting Secretary-General

LETTER TO THE SECRETARY-GENERAL FROM THE CHIEF OF
THE FOREIGN AFFAIRS DIVISION OF THE FEDERAL
POLITICAL DEPARTMENT

Berne, April 9th, 1925

[*Translation*]

In a letter dated February 20th last, you pointed out that the Swiss officials and employees of the Secretariat of the League of Nations and the International Labour Office, who hitherto had only been taxed by the Genevese authorities on their personal property, had now been asked to pay taxes on their income from all sources, that is to say, on their salaries as well. You further expressed the opinion that this demand was not consistent with the *modus vivendi* at present in force in regard to the staff of the League at Geneva, as established by the letters exchanged between the Political Department and the Secretary-General on July 19th and October 24th, 1921.

The Council of State of the Canton of Geneva, to whom we applied for information on the subject, stated that the Order (reproduced in our letter of July 19th, 1921, to the Secretary-General) which it issued on June 14th, 1921, regulating the position of the League personnel as regards liability to taxation had been cancelled, and was now superseded by Article 7 of the Cantonal Taxation Law of March 24th, 1923, which reads as follows:

Article 7. — Diplomatic representatives and agents of foreign States, representatives, officials and employees of the League of Nations and of the International Labour Office, other than those of Swiss nationality, shall be

exempt from income tax and from the tax on capital, within the limits of the Federal laws, of existing treaties and of the principles of public law in the matter of extraterritoriality.

As you will see, this law, now in force in the Canton of Geneva, contains an explicit exception with regard to the Swiss personnel of the League of Nations.

The "provisional *modus vivendi*" which applies at Geneva to the officials of the League does not constitute an unalterable conventional obligation; moreover, as the Cantons have sovereign powers in regard to taxation, the Federal authorities could not raise any objection even if the Canton of Geneva, without regard to their wishes, decided to tax the Swiss personnel, unless the Cantonal Law of March 24th, 1923, conflicted on this point either with international law or with treaties. In the course of a conversation which I recently had at Geneva with M. Avenol, the Deputy Secretary-General, I pointed out the difficulties to which these special circumstances gave rise. M. Avenol observed, however, that in his view any taxation of the salaries of the League personnel, even if the latter possessed the nationality of the country of residence, was incompatible with the conventional statute granted to the League by the Covenant. As it is the duty of the Confederation to interpret international treaties, the Federal Council would be empowered, if appealed to on the ground of the League's conventional status, to direct the Cantonal authorities as to the manner in which that status should be interpreted. In case any decisions have to be taken in this matter by the Federal Council, we should be greatly obliged if you would give us detailed statement of the facts and arguments on which you base your contention that the taxing of salaries paid by the League and, in general, the taxation of its movable property would be contrary to the League's statute. In this connection, we venture to point out that the settlement of this question would seem to be independent of the immunities granted to the officials of the League under Article 7 of the Covenant and does not therefore come under the terms of that article. We would refer to your letter of August 9th, 1922 (No. 19/11453/11453X), and would further point out that the Federal Council, if it wishes to oppose the application of an internal law, cannot invoke grounds of equity, expediency or mere courtesy: it must be able to base its objection on a Convention or at any rate on an international usage which has been sanctioned by the general practice of States.

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(Signed) PAUL DINICHERT
Head of Foreign Affairs Division

LETTER FROM THE SECRETARY-GENERAL TO THE HEAD OF
THE DIVISION OF FOREIGN AFFAIRS OF THE FED-
ERAL POLITICAL DEPARTMENT

Geneva, April 24th, 1925

[*Translation*]

I have the honour to acknowledge receipt of your letter B.56.41. D.I.K.T. of April 9th, 1925, concerning the question of the exemption from taxation of officials of Swiss nationality on the Secretariat of the League of Nations and the International Labour Office.

I would inform you, in reply, that the questions raised in your letter are at present receiving the careful attention of the Secretariat, and that I propose to revert to this question in a subsequent communication.

For the Secretary-General:

(Signed) VAN HAMEL

Director of the Legal Section

LETTER FROM THE SECRETARY-GENERAL TO THE HEAD OF THE
FEDERAL POLITICAL DEPARTMENT

Geneva, June 11th, 1925

[*Translation*]

I have the honour to refer again to your letter of April 9th (B.56/41/D.I. K.T.), the receipt of which was acknowledged by my letter of April 24th.

In your letter you state that the Decree made by the Conseil d'Etat of the Canton of Geneva on June 14th, 1921, regulating the position as regards taxation of the staff of the League of Nations, has in fact been abrogated and replaced by Article 7 of the Cantonal Taxation Law of March 24th, 1923, which expressly excludes staff of Swiss nationality from the exemption of taxation on income and capital. You continue that the provisional *modus vivendi* applied at Geneva to officials of the League did not constitute an unalterable arrangement and that, as the Cantons have sovereign powers with regard to taxation, the Federal Authorities could only intervene if the law of March 24th, 1923, was, as regards the point in question, contrary to international law or to treaty stipulations. You invite me to address to you a detailed statement of the facts and arguments on which I base the view that the taxation of salaries paid by the

League and, in general, the taxation of movable property of the League, is contrary to the League's constitution (*statut*). You suggest that the solution of the questions at issue is independent of the immunities created by Article 7 of the Covenant, and refer in this connection to my letter of August 9th, 1922. Finally, you observe that the Conseil Fédéral could not intervene against the application of a Cantonal law on grounds of equity, expediency or mere courtesy, but only if it could base its intervention on treaty provisions or on usage consecrated by the general practice of States.

You indicate also that the statement which you invite me to prepare will be of assistance to the Federal Council in examining the question raised in my letter of February 7th last relating to taxation of certain funds belonging to the Provident Fund of the League of Nations.

I have not failed to give the most careful consideration to your letter, but I have not found in it any reason for modifying the view which I have consistently maintained that salaries paid by the League to officials, whether of Swiss or of other nationalities, and funds belonging to the League and the interest earned by such funds, are not proper subjects for Cantonal or Federal taxation.

You will permit me in the first place to observe that the exemption from taxation conferred on Swiss officials of the League by the Conseil d'Etat's Decree of June 14th, 1921, was embodied as one of the terms of the Provisional Régime applicable to the League of Nations and to its staff resident in Geneva. Indeed, this fact is explicitly mentioned in the last paragraph of the first section of M. Motta's letter dated July 19th, 1921. On page 3 of an *aperçu* of this régime, published by the Department of Justice and Police of Geneva, this exemption is stated in the following terms:

Il y a lieu toutefois de mentionner dès à présent que les ressortissants suisses, fonctionnaires de la Société des Nations jouiront des avantages suivants:

a)

b) Exemption, en application de l'arrêté du Conseil d'Etat du 14 juin 1921, dans le Canton du paiement de la taxe sur le revenu professionnel pour les traitements qui leur sont alloués par la Société des Nations.

It is true, as you remark, that this régime was expressly intended to be subject to modification from time to time as might be required, but it is contrary to the nature of the arrangement that it should be modified unilaterally by one party to it without consultation of the other party and without producing any justification for so doing. Article 7 of the Genevese law of March 24th, 1923, which entirely rescinds the above-quoted provision of the arrangement, was enacted

without any consultation of the Secretariat and without communicating the article to the Secretariat, which first became aware of its practical consequences through its application to the officials affected. It has occasioned us some surprise, and is, in my opinion, a cause for complaint that the Canton of Geneva should in this manner have unilaterally altered an arrangement which had been reached by protracted friendly negotiations and was certainly not intended to be modifiable without discussion between the parties to it. I regret that you have not taken this aspect of the matter into consideration in your letter of April 9th. Article 7 of the Cantonal Law in question is a direct infringement of an interpretation of the rights of the League which had been adopted by agreement between the Federal Authorities, the Genevese Authorities and the Secretariat and, as such, it seemed, and, in the light of the terms of your letter, it still appears to me, to furnish a proper occasion for intervention by the Federal Authorities.

The ultimate legal ground for claiming immunity from taxation for League officials lies, in my opinion, in the provisions of Article 7 of the Covenant conferring upon them diplomatic privileges and immunities when engaged on the business of the League.

In my letter of August 9th, 1922, I put forward various subsidiary reasons of a practical nature for granting a certain immunity from taxation to Swiss officials, but you will doubtless have observed that I made full reservations in regard to the question of the interpretation to be given to Article 7 of the Covenant in the matter. I need not recall the practical reasons which I have mentioned, but, as I consider them to be of considerable importance, I venture to refer you for a statement of them to the letter in question. You will see, on consulting that letter again, that I did not by any means suggest that the claim for exemption does not ultimately rest upon the provisions of Article 7 of the Covenant. On the contrary, I have always held and still hold that it is upon this article that the claim must really rest.

Diplomatic privileges and immunities are, it is believed, universally considered to impart exemption from direct taxation, at least upon sums received by the person in his diplomatic capacity. In the case of the League, we consider the reasonable application of the article to be: (a) that an official should not become subject to any taxation by reason merely of his being obliged to enter or reside in a particular country owing to the nature of his functions, *i.e.*, that officials who are brought by the League to Switzerland should not thereby become subject to Swiss taxation, and (b) that the salary which the League pays to its officials should be exempt from taxation in all cases.

The objection which I understand to be taken against the application of this principle by Switzerland to Swiss officials is that it is not proper for a person to enjoy diplomatic privileges *vis-à-vis* the State of which he is a national. I am aware that this proposition is one for which considerable authority can be adduced. It cannot, however, be regarded as a rule universally recognised in international law. On the contrary, both the English and the French courts have recognised that a person who, with its consent, is accredited to the Government of the State of which he is a national as the diplomatic representative of a foreign Power, is entitled to the same measure of diplomatic privilege as if he were a foreigner¹.

In 1920, when the seat of the League was temporarily established at London, it was at once recognised by the British authorities that the League salaries received by British, as well as by non-British, officials were absolutely exempt from income tax, and this rule has again been accepted by those authorities since the transfer of the seat of the League to Geneva.

Similarly, when the seat of the Permanent Court of International Justice was established at The Hague, the Netherlands Government decided that the emoluments received by persons of Dutch nationality in respect of their services as officials of the Court should not be taken into account in the application of the Income Tax Law or the National Defence Tax Law.

Even if the alleged rule had hitherto been universally established, it would be difficult to admit its applicability to officials of the League, who are accorded diplomatic privileges in circumstances and for a purpose for which there is no precedent. They should be assured of a wide measure of independence as regards their own Governments. In theory, at any rate, an official might find diplomatic privileges particularly necessary, as far as his own Government was concerned.

The League has properly shown itself anxious to minimise any practical inconveniences resulting from the privileged position of its officials *vis-à-vis* the state of which they are nationals, and for this reason, for example, has not claimed for Swiss officials, in principle, exemption from performing their military service. The question of exemption from taxation, however, is one on which the financial interests of the League make it impossible for me to make concessions. The interest which the League has in securing for all its officials exemption from taxation upon their League salaries was, in fact,

¹ See the case of *Macartney v. Garbutt*, 1890, L.R. 24. 2. B.D. 368, reported in BENTWICH'S "Leading Cases on International Law" at page 132, and DALLOZ' "Répertoire Pratique de Législation" tome premier, page 275, Section 17.

affirmed by the second Assembly through its adoption of the following recommendation of its Fourth Committee. (*Actes de la deuxième Assemblée, Séances plénières*, pages 598 et 599.)

5. *Impôt sur le revenu.* — La quatrième Commission, constatant la situation défavorable créée à certains fonctionnaires de la Société ressortissants de nations dont la législation fiscale comporte un impôt personnel sur le revenu et en particulier sur les salaires et revenus du travail, approuve et s'approprie la suggestion de la Commission d'experts, tendant à ce que des démarches soient faites auprès des gouvernements intéressés, pour qu'ils consentent à exonérer de cette sorte d'imposition tous les fonctionnaires de la Société des Nations, étant bien entendu que cette exonération ne s'appliquerait qu'aux traitements payés par la Société.

The objection that to admit a person to be diplomatically privileged against the State of which he is a national is to exempt such person from every form of jurisdiction is not in my opinion of serious practical importance, because any abuse of his privileged position by a League official can adequately be dealt with by the League authorities on complaint being made by the proper national authority. I need hardly add that the League would certainly not wish to retain the services of an official if the Government of the country in which he was employed put forward any justifiable objections to his presence in its territory or to the manner in which he was making use of the diplomatic privileges granted him.

In conclusion, I think, and your Excellency will doubtless agree with me, that the considerations set forth above are such as to put an end to the controversy which has arisen.

(Signed) ERIC DRUMMOND
Secretary-General

LETTER FROM THE SECRETARY-GENERAL TO THE HEAD OF THE
FEDERAL POLITICAL DEPARTMENT

[Translation]

I Annex

Geneva, December 18th, 1925

I have the honour to forward to you herewith a copy of a report of the conversations which took place at the Secretariat of the League of Nations on December 1st and 2nd, 1925, to discuss the *modus vivendi* applicable to the organisations of the League at Geneva.

While personally repeating the appreciation which I have already expressed through my representative of the attitude adopted by the Federal Council in connection with the settlement of the matters in question, I should be glad to receive at your convenience a statement of your views concerning the execution of the agreements which have been concluded and the settlement of the only question still outstanding.

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(Signed) ERIC DRUMMOND
Secretary-General

Annex

EXTRACTS FROM A REPORT OF THE CONVERSATIONS WHICH TOOK
PLACE AT THE SECRETARIAT OF THE LEAGUE OF NATIONS ON
DECEMBER 1ST AND 2ND, 1925, TO DISCUSS THE "MODUS VI-
VENDI" APPLICABLE TO THE ORGANISATIONS OF THE LEAGUE
OF NATIONS AT GENEVA

[Translation]

B. Fiscal Question: Position of Swiss personnel

The Swiss delegation, through its first delegate, M. DINICHERT, explained that the Federal Council, at the urgent request of the organisations of the League, had very carefully examined the question whether the Swiss personnel of the League might enjoy the benefits of immunity from taxation in respect of the salaries they receive from the League. It was scarcely necessary to say that the Government of the Confederation, if it had felt itself bound in this matter by any treaty engagement, would have immediately granted exemption; but the Federal Council, interpreting the question in the light of modern international law, considered exemption from taxation, as granted in practice, to be not a right in accordance with international law (*jus gentium*), but a custom based on simple courtesy (*comitas gentium*). Fiscal immunity in fact was not a necessary concomitant of official duties; taxation, on the other hand, corresponded exactly to the services actually rendered to the taxpayer by the State. Accordingly, the Federal Council did not consider that a conventional provision which, like Article 7 of the Covenant, referred expressly to diplomatic privileges and immunities, could impose upon the Confederation, in the absence of an authoritative interpretation of the text applicable to all States Members, any legal obligation in fiscal matters which would be contrary to ordinary

diplomatic law. Nor did it for a moment agree that the payment of taxes, which were simply the equivalent of services rendered and expenses actually incurred by the State, could be regarded as an indirect recovery of its contribution to the expenditure of the League. Consequently, the Federal Council considered that the fiscal exemption asked of it could only be granted provided that the favour was fully compatible with the duties imposed upon it by its respect for constitutional principles. On this point, in the absence of any conventional stipulation of a binding nature, the Federal Council did not feel justified in deciding upon an exemption which in its opinion would be incompatible with the principle of the equality of Swiss citizens before the law, as laid down in Article 4 of the Federal Constitution. Any exception to this principle would be disapproved of by Swiss public opinion, which would not understand how it could be in accordance with sound political morality that Swiss citizens exercising full civil and political rights should escape from public burdens, while they were privileged to remain in their country with all the advantages that such residence conferred. M. Dinichert further referred to the small financial importance of the problem, which bore no relation to the sacrifices voluntarily made elsewhere by the Swiss authorities; the question was one of principle.

Dr. VAN HAMEL, speaking on behalf of the organisations of the League of Nations at Geneva, took note of M. Dinichert's statements and remarked that legally they were faced with two opposing points of view. It was Dr. Van Hamel's duty to maintain that of the League organisations. He did not wish to put the whole case of the League on this question, as a full discussion did not appear desirable at the present stage of the conversations. He would confine himself to recalling certain essential points, without commenting on them, and making all reservations with regard to a fuller statement of the case and of the replies to be given to M. Dinichert's remarks at a later date.

Although the League of Nations had never desired to claim the application to Swiss officials of a system identical in all respects with that applied to officials of foreign nationality, they were concerned with a legal obligation incumbent upon each Member of the League of Nations in virtue of the acceptance of the Covenant, and particularly of Article 7.

From a legal point of view, the only unassailable theory was to consider the immunities as attaching to the *functions* exercised by the person in question. It was in fact in the interests of the official duties only that the Covenant had established immunities. It made

no distinction between foreigners and nationals. This fundamental conception involved several consequences, the chief of which was that immunities could not be refused to an office on account of the nationality of the person who held that office at a given moment. This view had been supported by the highest legal authorities, and the Institute of International Law had expressed the opinion that the immunities of officials of the League of Nations should be recognised irrespective of nationality.

Regarding fiscal immunity in particular, it was generally recognised as belonging to diplomatic immunities, and it was sanctioned by custom. It also followed indirectly from jurisdictional immunity. Accordingly, it applied, when the case arose, to nationals as well as to foreigners. There had been occasions in international law, long before the creation of the League of Nations, when this rule had been recognised in its entirety.

Furthermore, it was not only Article 7 of the Covenant which could be invoked in favour of fiscal immunity, but also the last paragraph of Article 6, which apportioned the expenses of the League of Nations between the States Members. The taxation of salaries paid by the League of Nations would affect both *de jure* and *de facto* the scale elaborately worked out by the Assembly of the League of Nations. Even if general fiscal immunity were not claimed, there was, anyhow, reason to demand exemption from taxation for all salaries paid out of the contributions of States Members. The Secretary-General felt obliged to insist on the application of this rule by all Governments in whose territory officials of the League of Nations and of the International Labour Office resided in order to carry out their duties, even if these officials were nationals of the country. He did not think it possible that an exception could be admitted in respect of any country whatever.

M. DINCHERT took note of Dr. van Hamel's statements, and agreed that it was not at present desirable to enter upon a general discussion of the legal question.

With regard to the immunities to be granted to nationals (Swiss personnel), M. Dinichert, remarking that the question of the jurisdictional immunities of Swiss officials had not been raised, desired, in view of the opinions that had been expressed, to point out that, according to diplomatic law and in conformity with the existing *modus vivendi*, acts called "official" were the only acts for which a national was not personally responsible to the competent authorities of his country.

As regards fiscal immunity, M. Dinichert mentioned that the

Institute of International Law, to which reference had been made, had expressed the unanimous opinion at its 1924 session that this immunity was one of pure courtesy, with the result that Article 7 of the Covenant did not entitle officials of the League of Nations to any right in this respect.

As regards differences of opinion on the question of law, M. Dinichert pointed out that, if the matter were referred to any tribunal whatever, the Federal Council would have to extend the scope of the discussion so as to cover all treaty rights enjoyed by the organisations of the League of Nations and its officials in virtue of paragraph 4 of Article 7 of the Covenant. The discussion would turn, among other things, on the definition that was to be given to the term "officials". The decision given on that question would itself determine the obligations of Members of the League of Nations arising out of Article 7.

Dr. VAN HAMEL added that other aspects of the question could also be discussed on that occasion. He said further that they were agreed not to continue the discussion of these different points.

In conclusion it was found that they appeared to be agreed upon all the problems on the agenda with the one exception of the fiscal difficulty in respect of officials of Swiss nationality. In these circumstances it was agreed that each of the delegations would refer the matter to the proper quarter, and this would enable the organisations concerned to consider the measures which the situation called for.

LETTER FROM THE HEAD OF THE FEDERAL POLITICAL DEPARTMENT

Berne, January 22nd, 1926

[Translation]

As you are aware, the conversations which took place at Geneva on December 1st and 2nd last in order to discuss the *modus vivendi* to be applied to the organisations of the League, successfully resulted in an agreement upon all the problems on the agenda, with the exception of the fiscal position of Swiss personnel.

In accordance with what had been agreed upon between your delegates and those of the Political Department, we informed the Federal Council of the result of the negotiations and, in particular, of the continued difference of opinion on the fiscal question. We have to inform you to-day that, after a re-examination of the situa-

tion, the Federal Council, notwithstanding its earnest wish to comply as far as possible with the requests of the League organisations, finds itself unable to modify its former point of view with regard to the taxation of Swiss personnel.

The views of the Federal Council are already familiar to you through the statement made in December by the delegates of the Political Department. We need therefore only refer here to the report prepared at the conclusion of these conversations.

We are convinced that the League organisations concerned will appreciate at their true value the reasons which induce the Federal Government to exclude its nationals from fiscal immunity.

(Signed) MOTTA
Federal Political Department

**LETTER FROM THE SECRETARY-GENERAL TO THE HEAD OF
THE FEDERAL POLITICAL DEPARTMENT**

Geneva, January 28th, 1926

[*Translation*]

In your letter of January 22nd, 1926, you informed me that, after re-examining the fiscal position to be established as regards the Swiss staff, the Federal Council found itself unable to modify its former point of view.

In acknowledging receipt of this letter, a copy of which I have forwarded to the Director of the International Labour Office, I have the honour to inform you that, in accordance with what was agreed upon in December 1925 between the delegates of the Federal Political Department and those of the Secretariat and the International Labour Office, the above-mentioned question will be placed on the provisional agenda of the next session of the Council, to be held in March.

I hope that I may take it as agreed that, in view of the institution of a new procedure, the competent authorities will be requested to suspend all executive measures.

(Signed) AVENOL
Acting Secretary-General

APPENDIX 2

THE POSITION, AS REGARDS TAXATION, OF THE SWISS MEMBERS
OF THE STAFF OF THE LEAGUE OF NATIONS
ORGANIZATIONS AT GENEVA

A. MEMORANDUM ADDRESSED TO THE SECRETARY-GENERAL BY
H.E. M. GIUSEPPE MOTTA, FEDERAL COUNCILLOR, HEAD OF
THE FEDERAL POLITICAL DEPARTMENT ¹

Geneva, February 24th, 1926

Note by the Secretary-General

The Secretary-General has the honour to communicate to the Council a memorandum addressed to him on February 16th, 1926, by H.E. M. Giuseppe Motta, Federal Councillor, Head of the Federal Political Department.

MEMORANDUM

I. — General Outline of the Position of the Staff

Article 7, paragraph 4, of the Covenant of the League of Nations contains the following stipulation:

Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

This clause, which is the only passage in the Covenant dealing with the question under discussion, was adopted by common agreement as a basis for the negotiations which took place in November 1920 between the Swiss Government and the Secretariat of the League of Nations with a view to fixing the *modus vivendi* to be applied to the staff of the League Organisations at Geneva.

Article 7, paragraph 4, of the Covenant refers merely to the diplomatic privileges and immunities universally recognised in international law. As this international law is not embodied in any definite text, the Swiss Government, anxious to display its good will towards the League organisations, and to show them all the courtesy in its power, thought it could not do better than offer the members

¹ League of Nations document C.92.1926.V.

of the staff the same privileges as are granted at Berne to the staff of the diplomatic missions accredited to the Federal Council. As applied to the missions of 39 States — including 33 Members of the League — who have never raised any objection, this régime may be regarded as an accurate expression of present international usage in this domain. The Swiss Government's proposal having been accepted by the Secretariat, the *modus vivendi* adopted in 1921, which is still in force, provides that the staff of the Secretariat of the League of Nations and of the International Labour Office "shall be subject to the same régime, *mutatis mutandis*, as is applied to the diplomatic missions accredited to the Confederation".

As a consequence, the staff of the League organisations at Geneva, like that of the diplomatic missions at Berne, is at present divided into two categories, the first of which corresponds to the diplomatic corps at Berne and the second to the "technical and manual staff" of the diplomatic missions.

The staff of the first category is alone entitled to diplomatic privileges and immunities properly so called (inviolability, and immunity of jurisdiction) — in other words, to "extra-territoriality"; in addition it enjoys the usual "courtesy" privileges, *i.e.*, fiscal immunity and Customs facilities, some of which, it may be observed, are substantially more extensive at Geneva than at Berne; and the high officials, like the chiefs of diplomatic missions at Berne, enjoy full Customs exemption. The staff of the second category is not extra-territorial; its members are, however, not personally responsible for acts performed in their official capacity; and, like the staff of corresponding rank at Berne, they are exempt from taxation and are not obliged to produce identity papers.

In granting the League officials and employees the privileges which have been outlined above, the Swiss Government considers that it has already gone far beyond the treaty obligations imposed upon it by the Covenant of the League.

In this connection the following points should be noted:

1. If we leave out of account the "representatives of Members", Article 7, paragraph 4, of the Covenant confers diplomatic privileges and immunities (extra-territoriality) only on the "officials" (*agents*) of the League. The interpretation of the term "officials" is open to dispute; nevertheless, there can be little doubt that, in granting the privilege of extra-territoriality to 350 persons whom the Secretary-General of the League of Nations and the Director of the International Labour Office had named as being "at least of the same standing as Secretaries of Legation", and in granting fiscal immunity to hundreds of minor officials, the Swiss authori-

ties did more than was required of them by Article 7 of the Covenant.

2. According to modern law and doctrine, diplomatic privileges and immunities can now be justified only by reason of the exigencies of the service; their only purpose is to guarantee diplomatic agents the independence they require for the performance of their duties. Hence diplomatic privileges and immunities are to-day limited in law to personal inviolability and immunity from jurisdiction; the other immunities and facilities which, according to international usage, accompany extra-territoriality, and are also granted in a lesser degree to the minor staff of diplomatic missions (fiscal immunity, Customs facilities, etc.), are purely matters of courtesy; they belong to the domain of "*comitas gentium*", and in the absence of an express treaty clause they cannot be claimed as a right.

II. — *Special Position of Swiss Members of the Staff*

It is a rule of international law that diplomatic privileges and immunities may always be refused to a diplomatic official in the country of which he is a national. This exception to the general principle of the extra-territoriality of public servants is based on the flagrant inequality of the treatment they would otherwise receive as compared with their fellow-countrymen. Notwithstanding the privileged status he enjoys while performing his duties, a diplomatic official is on the same footing, in his own country, as his compatriots; by reason of his very extra-territoriality he remains subject to the jurisdiction of his own country, where he may at any time be summoned, arrested, prosecuted or sentenced, and where he may also be taxed. If, on the other hand, a diplomatic official who was a national of the country to which he was accredited enjoyed diplomatic privileges in that country, he would cease to be amenable to any civil or criminal court, and would thus be completely out of reach of the law. It is in order to preclude the possibility of such situations, which it considers inadmissible, that the Swiss Federal Council has never granted diplomatic privileges and immunities to its own nationals.

At the outset, therefore, of the negotiations begun in 1920 for the establishment of a *modus vivendi*, the representatives of the Federal Council emphasised the impossibility of granting the Swiss members of the staff of the League of Nations any personal privileges, either in the matter of jurisdiction or as regards taxes or Customs. The League Organisations were given, however, a formal assurance that the Swiss members of the staff would not have to answer before the

Swiss courts for acts they might have committed in their official capacity and within the limits of their powers (*faits de service*); the Federal Political Department expressed its willingness to intervene if judicial police measures or other proceedings taken against a Swiss member of the staff appeared liable to interfere with the normal course of the League's activities. While recognising that it was difficult for the Swiss Government to give up all control over its nationals in Swiss territory, the Secretariat nevertheless asked that an exceptional régime should be applied to the Swiss members of its staff, and particularly that the salaries of Swiss officials and employees should be exempted from all federal, cantonal and municipal taxation. As it was not found possible to reach an agreement on this point, the question remained open, and the *modus vivendi* adopted at that time expressly mentioned that the position of the Swiss members of the staff was still unsettled.

Nevertheless, by a Decree pronounced on its own initiative on June 14th, 1921, the Council of State of the Canton of Geneva granted the desired immunity in the territory of the canton, and this fact was noted in the *modus vivendi*. Subsequently, this administrative decision was abrogated by the Genevese Taxation Law of March 24th, 1923, Article 7 of which grants immunity from taxation only to those officials and employees of the League of Nations and the International Labour Office who are not of Swiss nationality. On hearing of the approaching application of this cantonal law, the Secretariat of the League renewed its representations to the Federal authorities with a view to obtaining full exemption from taxation for the salaries of the Swiss members of the staff of the League organisations.

The Federal Council has given this last request the most careful consideration. Nevertheless, anxious though it is to comply as far as possible with the wishes of the organisations of the League of Nations, it has not seen its way to do so as regards the Federal War Tax, nor to insist that the Genevese authorities, who have sovereign power in the matter of taxation, should grant the exemption desired.

The Secretariat of the League bases its request on Article 7, paragraph 4, of the Covenant, and claims fiscal immunity as a right for all its members. If the Federal Council had considered itself legally bound in this matter by the clause referred to, it would, of course, not have hesitated to take appropriate steps. In view, however, of the considerations put forward above, it will be realised that in this case the Federal Council cannot admit the existence of an international treaty obligation.

We have already pointed out:

(1) That the right of a State to refuse diplomatic privileges and immunities to its own nationals is established in international law;

(2) That, in modern doctrine of international law, fiscal immunity is regarded not as a prerogative but as a privilege granted out of courtesy.

In diplomatic law, therefore, there are two reasons instead of one why a national, if he is a diplomatic agent, should not be able to claim fiscal immunity in his own country. But Article 7 of the Covenant refers exclusively to diplomatic privileges and immunities. In the absence, therefore, of any binding interpretation of this clause, which could be enforced upon all States Members, the Federal Council fails to see that the Article imposes upon it, in the case at issue, obligations which are not recognised in international law.

It will further be observed that the fiscal immunity claimed by the League organisations on the basis of Article 7, paragraph 4, of the Covenant would, even if it were a legal right, apply only to the "*Officials*" ("*Agents*") of the League, who are alone mentioned in the Article; the Secretariat, on the other hand, claims such immunity for all its members, including auxiliary staff.

Again, the League organisations draw a distinction between salary and private income — a distinction which has not hitherto been encountered in international usage. In practice, when fiscal immunity is granted to a diplomatic or consular official, it covers all direct taxation, with the single exception of the land-tax.

In its letter to the Political Department, dated June 11th, 1925, the Secretariat of the League, while stating that the fiscal immunity claimed on behalf of its Swiss members "was based on the provisions of Article 7 of the Covenant", further adduced "subsidiary practical" arguments. It urged, for example, that if a State taxed the salaries paid by the League of Nations to its staff, that State would, in actual fact, be indirectly recovering part of its contribution to the expenditure of the League. The Federal Council cannot accept this view. The payment of taxes does not represent a gratuitous contribution made by the taxpayer to the State; the sums due to the Exchequer represent a consideration for services actually rendered to him by the State. In exempting from taxation some 600 officials and employees of the League of Nations at Geneva, as they did at the outset, the Swiss authorities were inspired solely by motives of courtesy — a courtesy which, we may add, was acted upon without hesitation.

The diminution of revenue which the Confederation and the Canton of Geneva would suffer by the fiscal exemption of the Swiss

officials of the League is trifling in comparison with the financial sacrifices already made by Switzerland, notably in the matter of Customs duties, for the benefit of the League organisations. If the Federal Council, after mature reflection, has nevertheless refused to grant the new concession for which it was asked, that refusal is due to considerations of principle. In the absence of any binding stipulation, the Federal Council does not feel justified in granting exemption when, in its view, such exemption would be incompatible with the principle, embodied in Article 4 of the Federal Constitution, that all Swiss nationals are equal before the law. Moreover, the Federal Council is aware that the situation of inequality which such action would thus unnecessarily create in Federal territory to the advantage of a body of citizens having the same rights as their fellow-countrymen, would not be welcomed by Swiss public opinion, which would regard it as contrary to all its conceptions.

In support of the view that the Swiss members of the staff of the League have a formal right to fiscal immunity in respect of their salaries, the Secretariat also relies upon a recommendation adopted by the Second Assembly on the proposal of the Fourth Committee. This recommendation reads as follows:

The Fourth Committee, taking into consideration the unfavourable situation of certain officials of the League who are nationals of States whose fiscal laws impose a tax on incomes, and in particular on salaries and earned income, approves and adopts the suggestion made by the Committee of Experts that the Governments concerned should be approached with a view to inducing them to exempt all officials of the League of Nations, in respect, of course, only of their salaries from the League, from income tax of any kind upon those salaries.

In the view of the Swiss Government, on the other hand, this resolution, recommending as it does that the Governments should be approached "with a view to inducing them" to grant exemption, confirms the absence of any obligation on the States Members to do so. Clearly, if the alleged right had existed, there would have been no object in making such a recommendation. The absence of any formal right to entire fiscal immunity was recognised even at the First Assembly — by the Third Committee when it considered the scheme for the establishment of a Permanent Court of International Justice. In connection with the salaries of judges, it was admitted that the League of Nations could not encroach upon the fiscal sovereignty of the States Members.

In connection with the recommendation quoted above, there is another point of interest, viz. that it refers to "inducing", not the Swiss Government alone, but the Governments of all the States

Members. The Federal Council is under the impression that Switzerland is not the only country which taxes, or has taxed, the salaries paid to certain of its nationals by the League organisations. In any event, therefore, the problem is one which affects all the States Members of the League, and therefore calls for solution by general consent.

The Federal Council is strengthened in its determination to maintain this view by the fact that the latter seems to have been entirely shared by the Committee of Jurists appointed by the Council of the League in 1920 to draw up a scheme for the organisation of the Permanent Court of International Justice. The text submitted to the Council by that Committee contained the following clause in Article 19:

The members of the Court, *when outside their own country*, shall enjoy the privileges and immunities of diplomatic representatives.

This text was subsequently amended by the Third Committee of the First Assembly, which adopted in its place the terms employed in Article 7 of the Covenant; it is important, however, to note that, in adopting this amendment, the Committee at the same time decided that the question of the situation of the judges in their own country should not thereby be prejudiced.

Another formula, which was proposed in the Committee by M. Politis and supported by M. Ricci Busatti, may also be quoted here as an indication of the prevalent international practice:

The members of the Court enjoy the same privileges and immunities as diplomatic representatives, except in their own countries, where, however, they still have the right of inviolability for their official correspondence, and shall in no case be held legally responsible for acts relating to the performance of their duties.

The whole history of the development of diplomatic privileges and immunities tends to show that they are only granted with a view to the exigencies of official business. At its Vienna session in 1924, the Institut de Droit International unanimously decided that, in international practice, fiscal exemption was granted purely as an act of courtesy. Eminent jurists and high courts of justice go so far in these days as to dispute the right of diplomatic representatives to invoke their jurisdictional immunity in connection with acts committed in private life. The League of Nations is the child of progress, and the Federal Council is confident that the League organisations will not insist that the present difficulty be settled in a manner conflicting with the modern tendencies of law.

B. COMMENTS ON THE MEMORANDUM ADDRESSED TO THE SECRETARY-GENERAL BY H.E. M. GIUSEPPE MOTTA, FEDERAL COUNCILLOR,
HEAD OF THE FEDERAL POLITICAL DEPARTMENT
(C. 92. 1926. V)¹

Geneva, March 5th, 1926

MEMORANDUM BY THE SECRETARY-GENERAL

The Secretary-General desires to submit the following general comments on the above-mentioned memorandum.

These comments apply equally to the position of the officials of the International Labour Office. Under the terms of Article 392 of the Treaty of Versailles, the International Labour Office forms part of the organisation of the League and, as regards immunities, is in the same situation as the Secretariat.

I

As its title and terms indicate, the *modus vivendi* mentioned in the first section of the Swiss Government's memorandum was negotiated with the object of finding a provisional practical solution for the questions which required immediate settlement. It does not constitute an agreement between Switzerland and the League as to the ultimate principles governing the interpretation of Article 7, paragraphs 4 and 5, of the Covenant.

In view of the terms of the Swiss memorandum, the Secretary-General feels it necessary to raise, as a question of principle, the question of the exact nature of the obligations contained in those provisions of the Covenant.

II

The expression "*diplomatic privileges and immunities*" as used in relations between States denotes the body of privileges and immunities which are enjoyed by a diplomatic agent for the purpose of protecting his independence and dignity in his dealings with the Government to which he is accredited. These privileges and immunities belong to the domain of custom and usage; they rest, in fact, upon reciprocity and are normally enforced by the possibility of retaliation. Granting that there is a customary rule of the law of nations that the agent must be adequately protected in the exercise of his functions, the details of the treatment accorded him may and does vary considerably from country to country, but such variations are checked by the influence of reciprocity. Each State has an in-

¹ League of Nations document C.127.1926.V.

terest in conceding to the agents of the others the treatment which it desires to obtain from them for its own agents. In particular cases, the treatment accorded might also conceivably be affected by the nature of the relations, intimate or the reverse or more or less friendly, which subsist between the two Governments in question. The more essential privileges and immunities, in regard to which variation of practice is hardly possible, tend to be regarded as legal rights, while the less essential which are apt to be accorded on the express basis of reciprocity are regarded as matters of courtesy.

The forces which tend to maintain in relations between States a more or less uniform practice as regards diplomatic privileges and immunities cannot, however, come into play in the relations between the League and its Members in general or between the League and the country in which its seat is established. The League is an international organisation established in the general interest of all its Members and controlled by them, without sovereign rights and without territory. It cannot grant reciprocity or exercise retaliation. There can be no question of its maintaining more or less friendly or more or less intimate relations with particular Members. Its position, moreover, differs fundamentally from that of a State, in that it is obliged not to maintain small diplomatic missions but to establish its headquarters and to maintain the whole of its growing administrative services and to keep and invest its funds in territory over which it has no sovereign power, and is in practice obliged to recruit a large part of its staff from nationals of that territory.

The above considerations show that only a very imperfect analogy exists between the claim of a State for a special status for its diplomatic missions and that of the League for a special status for its property and officials.

It follows that the Covenant, when it confers *diplomatic* privileges and immunities on the League's officials, cannot be regarded as simply referring to an established body of law or customary practice in which all the details of the intended status can be found. The phrase describes the general character of the status. The exact scope of the intended privileges and immunities must, in the Secretary-General's opinion, be ascertained by considering the object for which they are created rather than on the basis of treating the League's premises and staff as nearly as possible as though it were an embassy or legation, to which in fact it bears hardly any resemblance. The object of the paragraph must in short be to create for the League's organisations and its officials, in their capacity of officials, a status assuring to them the completest possible independence *vis-à-vis* of each Member in the interest of all the Members in general. To

accord this status is an obligation which each Member has assumed towards the others and which is not restricted by the provisions of the individual Member's domestic legislation or administrative rules. It is evident that the according of privileges and immunities under the article cannot properly be made a matter of favour or of courtesy towards the League or its officials, and that the status of the League officials, once established, cannot be susceptible of unilateral modification at the pleasure or in consequence of changes in the domestic law of any particular country. The League officials must not be given the sentiment that they benefit by the grant of a regime of special favours and are liable to suffer from their withdrawal. Such a situation would be directly contrary to Article 7 of the Covenant, the object of which is to assure the independence of the officials of the League. It is not a question of creating an arbitrarily privileged class. The official's special status does not belong to him as an individual or exist for the protection of his personal interests. The object is to protect League interests in ensuring that measures affecting the officials cannot be taken without the concurrence of the competent League authority. There is no danger that the heads of the League offices will allow them to become asylums for wrongdoers or that, in the last resort, the Council or the Assembly would tolerate any abuse of privilege to which their attention was called by any Member of the League.

For these reasons, it would seem that no distinction can be made on the ground of nationality. If the above reasoning were carried further, it might even be said that it is precisely in the case of officials employed in the country of which they are nationals that their responsibility as international officials has particular need to be emphasised and protected. Article 7, paragraph 4, of the Covenant gives the League official, as such, privileges and immunities *vis-à-vis* of all the Members and not all the Members except his own State, and indeed it may easily be in his own State that he may most legitimately require protection; it is there, for example, that, after retirement, he is most likely to be exposed to suits based on his official acts. This interpretation does not conflict with any rule of international law. The contrary interpretation adopted by the Swiss Government rests merely on the proposition, which is not disputed but is irrelevant, that a State cannot force another State to give diplomatic privileges to one of the latter's own nationals by simply selecting him as its diplomatic agent. The League may require to employ nationals of any of its Members in any capacity and its Members have agreed that the performance of the League official's functions shall be protected without any reservation as to his nationality.

III

The provisions of Article 7, paragraphs 4 and 5, of the Covenant are obviously of special importance in the relations between the League and the country in which its seat is established. It is in this country that the enjoyment by the League of a status for its property and officials which adequately guarantees its independence and freedom of action can least of all be treated as a question of goodwill or courtesy and be dependent upon the national authorities and the local law, however great may in fact be the marks of the courtesy, for which the Secretary-General desires to express his appreciation, which the authorities of that country have never failed to show within the limits which they consider permissible under their law. Whatever may be the proper limits of the privileges and immunities to be granted, they must ultimately be granted as a matter of right or of agreement with the League and not be subject to be modified unilaterally by the Government concerned.

Such seems, moreover, originally to have been the opinion of the Swiss Government and the interpretation which it itself placed upon its obligations under Article 7 of the Covenant.

A significant statement is contained in the message of the Conseil fédéral to the Assemblée fédérale of August 4th, 1919:

Devoirs de la Suisse. — Le fait que le siège est en Suisse n'impose à notre pays aucune obligation spéciale, sauf celle d'accorder les immunités diplomatiques, prévues à l'article 7 du Pacte, aux représentants des Etats membres et aux fonctionnaires de la Société elle-même, et de reconnaître l'inviolabilité des bâtiments et des terrains occupés par la Société, ses services et ses réunions. Il est naturel que la Société des Nations jouisse des mêmes privilèges et des mêmes immunités que tout Etat avec lequel nous entretenons des relations diplomatiques.

Tant que les fonctionnaires de la Société seront en petit nombre, on pourra considérer comme suffisantes les règles communes — du reste imparfaites à maints égards — du droit des gens sur les privilèges diplomatiques. Si, en revanche, la Société des Nations se développe, si ses fonctionnaires se multiplient et si ses services finissent par occuper des terrains importants, il y aura lieu de régler par voie de convention l'ensemble de ces relations entre la Société et les autorités locales, fédérales et cantonales. Peut-être devra-t-on aussi insérer dans la législation fédérale des dispositions spéciales concernant la Société, par exemple, des dispositions assurant à ses fonctionnaires une protection spéciale.

At an even earlier date, the Swiss Government appears to have gone further and to have contemplated the possibility of obligations which might perhaps not be confined to the provisions of Article 7

of the Covenant but would rest upon it specially in virtue of the establishment of the seat of the League in Switzerland.

Before the definitive text of the Covenant, by which the seat of the League is placed at Geneva, was approved by the League of Nations Commission of the Peace Conference (April 1919), a letter (see Annex I) was addressed by M. Calonder on behalf of the Swiss Government on March 22nd, 1919, to the President of the Conference and the Chairman of that Commission, which contains the following significant undertaking:

D'ores et déjà, je peux vous assurer que les autorités fédérales, cantonales et municipales s'empresseraient d'offrir à la Société toutes les facilités et tous les avantages qu'elle pourrait désirer.

The Swiss Government appears to have gradually arrived in practice at a rather different conception, which simply makes the practices of diplomatic courtesy apply to the case of the League of Nations. A tendency to assimilate the seat of the League of Nations to a legation appears to have prevailed and continually reappears. It is this thesis which is set out in unmistakable language in the Conseil fédéral's memorandum.

The memorandum appears to start from the thesis that the Covenant demands no more than an exact assimilation of the premises, property and staff of the League at Geneva to those of a normal diplomatic mission. The test applied to ascertain the extent of Switzerland's legal obligations under Article 7, paragraph 4, is always what could be claimed as an absolute right under international law by such a mission. The fundamental differences between the League's establishments and those of a mission have, of course, received recognition in practice under the *modus vivendi*, but the according of any treatment which in its nature or extent goes beyond what could be claimed as of right by a diplomatic mission (for example, the according of privileges to a greater number of officials than could be included in the personnel of a mission) tends, however essential such treatment may be from the point of view of the League, to be regarded as a mere according of favours from motives of good-will and courtesy towards the League and its officials. The natural result of this attitude is that difficulty may be felt in according even essential privileges and immunities which would require an alteration in the existing law or administrative practice, and that treatment which is considered to have been granted as a matter of favour is held to be capable of being withdrawn unilaterally and without notice.

This same attitude of the Swiss authorities has appeared in matters in which the general financial interests of the League were, but in which no personal interest of League officials could be, involved.

Two cases may perhaps be cited, not for the purpose of discussing the merits but as illustrations.

The first relates to the importation by the Secretary-General from Italy of parts of a lift which was to be installed in the Secretariat building.

The Swiss authorities considered that duty was chargeable at the Swiss frontier on this importation. The Secretary-General claimed that the importation was exempt from duty not merely under the provisions of the Covenant but under the following passage of the *modus vivendi* of 1921:

La Société des Nations bénéficiera d'une entière franchise de douane pour tous objets lui appartenant en propre (non à son personnel) et destinés à l'usage exclusif du Secrétariat général ou du Bureau international du Travail (mobilier des locaux, matériel et fournitures du bureau, etc.).

The general question raised by this incident has received a satisfactory practical solution as the result of negotiations held on December 1st and 2nd, 1925, during which the Secretary-General was informed that the Conseil fédéral intended to admit to Switzerland free of Customs duty all objects belonging to the League of Nations and intended for the exclusive use of its organisations at Geneva, including building material. The Secretary-General has, however, been informed that the Conseil fédéral will take this decision under extended powers conferred on it by recent Customs legislation, and it is not clear whether the exemption is recognised as a right or accorded as a favour which might be withdrawn or affected by changes in the Customs legislation. In the earlier stages of the discussion of the question, the Swiss authorities originally relied on a restrictive interpretation of the above-quoted passage of the *modus vivendi*, which excluded its application to material intended for incorporation in a building. Subsequently, the Conseil fédéral accorded exemption from duty on the importation in question but did so expressly "par courtoisie, mais à titre exceptionnel" and subject to the following statement of principle:

. . . le Conseil fédéral a chargé ce Département de prévenir le Secrétariat que le Gouvernement suisse assure à la Société des Nations, notamment, la jouissance de prérogatives douanières analogues à celles dont les missions diplomatiques bénéficient dans d'autres pays, ces prérogatives étant toutefois limitatives et s'appliquant au mobilier des locaux et aux fournitures de bureau, mais non pas aux objets et matériaux devant faire¹ partie intégrante d'un immeuble.

Similar incidents occurred when various Governments sent the International Labour Office objects for the decoration of its new

building. Duty was levied by the Federal administration on the entry of these gifts into Switzerland and was only refunded after repeated claims had been made by the Director of the International Labour Office.

The second case relates to the taxation of interest earned in Switzerland by funds belonging to the League.

On this matter, the Conseil fédéral has proposed an arrangement assimilating the treatment of League funds to the treatment enjoyed by funds belonging to the Confederation under a Federal Law of June 25th, 1921. The Secretary-General has considered it necessary to take the view that the domestic law of Switzerland cannot apply to the League of Nations, that the League is entitled as a right to freedom of taxation upon its funds deposited in Swiss banks and that this exemption cannot be subject to the provisions for the time being of Swiss law. Extracts from correspondence showing the decision of the Conseil fédéral and the comments of the Secretary-General will be found in Annex II.

It is indicated above that such difficulties as may have arisen hitherto in the application of Article 7 of the Covenant in Switzerland are in course of being solved. If, in reply to the memorandum of the Federal Government, it has been felt necessary to emphasise the two opposing views, it is for the reason that it is precisely this divergence of view which has prevented attaining a solution for the one difficulty which is still pending.

The Secretary-General's note (Document C. 66. 1926. V), which has already been distributed to the Members of the Council, gives the history of this question. The Conseil d'Etat of Geneva, by a Decree dated June 14th, 1921, and made about a month before the conclusion of the *modus vivendi* between the Chef du Département politique fédéral and the Secretary-General (July 19th, 1921), had spontaneously ordered that the Swiss staff of the League of Nations should be exempted in the Canton of Geneva from the tax on professional earnings in respect of the salaries paid by the League of Nations. The Secretary-General had received with gratitude this decision of the Government of Geneva, which both corresponded with his own conception as to privileges and immunities and appeared to constitute a measure parallel to that which had been arranged directly with the Federal Government in the *modus vivendi*. In 1923, the legislative authorities of the Republic and Canton of Geneva adopted a Law on Public Contributions, Article 7 of which abolishes fiscal immunities of officials of Swiss nationality. No communication from the Federal Government was received by the Secretary-General which could have caused him to suppose that

such a change was contemplated. Furthermore, the Assembly, without deciding the question from the legal point of view but anxious to assure equality of treatment between members of the Secretariat belonging to different nationalities, had voted a resolution to which the Secretary-General was directed to make every effort to give effect. From January 19th, 1925, to January 22nd, 1926, a correspondence, which is reproduced as an annex to the document C. 66. 1926. V, was exchanged between the Chef du Département politique fédéral and the Secretary-General. The Secretary-General, *inter alia*, called attention to the general consequences which would follow from the taxing of Swiss officials. He pointed out that, both owing to the official languages used by the League and in virtue of the Assembly's decision that subordinate staff should be as far as possible recruited locally — that is to say, at the seat of the League — States favoured by either of these circumstances, which are both favourable to Switzerland, have in the two administrations of the Secretariat and the International Labour Office a much larger number of their nationals than the other Members of the League; that, if these States were to tax the salaries of their nationals, this in fact would mean that they would recover part of their contributions to the expenses of the League, and that taxation of the salaries of officials of the League might even result in an increase in the League's budget and the placing of this increase upon the other Members which are already the Members least favoured from the point of view of recruitment of staff. He gave instances, to which others could be added, of countries which had decided not to tax the salaries of such of their nationals as are employed by the League of Nations.

In his letter of January 22nd, 1926, the Chef du Département politique fédéral informed the Secretary-General that the Conseil fédéral was unable to modify the point of view which it had previously adopted, which is, on grounds of principle, contrary to the view of the Secretary-General. In the case in question, as in the cases noted above, and indeed in other cases where discussion is still proceeding, the Conseil fédéral, basing itself upon the thesis of the application to the League of Nations of the usages of diplomatic courtesy, cannot but refuse to recognise for the League of Nations or its officials privileges or immunities going beyond such derogations from the national law as may be expressly contemplated therein.

Accordingly, it is the same differences of principle between the Conseil fédéral and the Secretary-General which have appeared in the cases mentioned above and which create an obstacle, which has hitherto been insurmountable, to the settlement of the important

question of the fiscal immunity of the Swiss staff. The source of these differences of principle is placed in a very clear light in the memorandum of the Conseil fédéral. This is the reason why the Secretary-General has thought it desirable to indicate in reply to the thesis presented in the memorandum his own point of view as a whole. Only a precise reply to the questions raised, based on the interpretation of Article 7 of the Covenant and, if necessary, of the obligations contracted by the Swiss Government in the capacity of the Government of the territory where the seat of the League is established, can, in the Secretary-General's opinion, permit of disposing rapidly of the difficulties which have arisen and of preventing their reappearance in the future.

ANNEX I

LETTER FROM M. CALONDER, MEMBER OF THE FEDERAL COUNCIL,
TO M. CLEMENCEAU, PRESIDENT OF THE PEACE CONFERENCE ¹

Paris, le 22 mars 1919

A la fin de la Conférence officieuse convoquée pour entendre les vœux des neutres, lord Robert Cecil a déclaré que les Etats invités à cette conférence seraient les bienvenus dans la Société des Nations.

Je saisis cette occasion pour vous informer que la Suisse considérerait comme un grand honneur de pouvoir offrir l'hospitalité de son territoire pour le cas où la Société des Nations voudrait fixer son siège dans notre pays.

Le Gouvernement et le peuple suisses seraient heureux et fiers de manifester ainsi leur vif désir de collaborer à l'œuvre de pacification mondiale entreprise par les auteurs du Pacte. Les traditions politiques et humanitaires de la Confédération helvétique, ses institutions démocratiques et sa position géographique semblent la recommander au choix de la Conférence que vous présidez.

D'ores et déjà, je peux vous assurer que les autorités fédérales, cantonales et municipales s'empresseraient d'offrir à la Société toutes les facilités et tous les avantages qu'elle pourrait désirer.

J'ajoute qu'une note analogue est adressée à M. Wilson, président de la Commission de la Société des Nations.

*Le Conseiller fédéral,
Président du Département politique suisse:
(Signé) CALONDER*

¹ Extract from "La question de l'accession de la Suisse à la Société des Nations", 1919, page 369. [This and the following annex exist in French only.]

ANNEX II

EXEMPTION OF THE FUNDS OF THE LEAGUE OF NATIONS FROM SWISS
TAXATION*I. Letter to the Financial Director of the Secretariat of the League
of Nations from the Head of the Foreign Affairs Division of
the Federal Political Department*Berne, le 1^{er} février 1926

Par votre lettre N° 31/48111/48111x, en date du 18 janvier dernier, vous voulez bien nous accuser réception de notre communication du 9 janvier concernant les intérêts sur avoirs de la Société des Nations.

Pour éviter tout malentendu — vous parlez, en effet, d'exonération de tous avoirs de la Société, soit en compte courant, titres, valeurs ou créances de toutes sortes —, nous prenons la liberté de vous rappeler les termes dont nous nous sommes servis le 9 janvier. Le Conseil fédéral a pris la décision d'assimiler, sous le rapport fiscal, les intérêts sur avoirs de la Société des Nations à ceux de la Confédération (article 5, lettre c, de la loi fédérale du 25 juin 1921). Nous avons ajouté que les banques seraient, conséquemment, invitées à ne plus soumettre, dorénavant, au droit de timbre les intérêts *des dépôts à long terme* (plus de six mois) de la Société des Nations ou de la Caisse de prévoyance de la Société. Les conclusions auxquelles ont permis d'aboutir les entretiens tenus les 1^{er} et 2 décembre 1925 au Secrétariat général de la Société et qui ont été approuvées, de part et d'autre, sont rédigées, du reste, dans les mêmes termes.

Nous présumons qu'aucune équivoque ne subsiste plus et invitons l'Administration fédérale des Contributions à passer à l'exécution de l'accord intervenu.

*Le Chef de la
Division des Affaires étrangères:*
(Signé) PAUL DINICHERT

*II. Extract from a Letter of February 13th, 1926, from the Secretary-General of the League of Nations to the Head of the
Federal Political Department*

Je crois devoir saisir cette occasion pour formuler également certaines observations sur le contenu d'une lettre adressée, en date

du 1^{er} février 1926, par le Département politique fédéral à Sir Herbert Ames, Directeur financier de la Société, et qui est relative au prélèvement d'une taxe fédérale sur les fonds appartenant à la Société et déposés dans les banques suisses. Quel que soit mon désir de tenir compte des remarques du Gouvernement fédéral, il me serait absolument impossible de me rallier à l'interprétation restrictive qui est donnée dans cette lettre à l'accord intervenu en 1925, lors des entretiens tenus au Secrétariat entre les représentants du Département politique et ceux de la Société, il m'a toujours semblé, en effet — et je regrette de ne pouvoir modifier mes vues à ce sujet —, que tous les avoirs de la Société, quelles qu'en soient la forme et la nature, et déposés dans les banques suisses, doivent être exonérés du droit de timbre fédéral et que, par conséquent, il serait difficile d'admettre une distinction telle que celle qui est indiquée dans la lettre du Département en date du 1^{er} février. Il me faut, en effet, sur ce point, attirer à nouveau votre attention sur la situation embarrassante où se trouverait la Société si l'arrangement devait être fondé sur les termes d'une loi fédérale en date du 25 juin 1921. Ainsi que je l'ai remarqué déjà, la législation intérieure suisse ne peut en aucune manière s'appliquer à la Société des Nations, le point de vue de celle-ci demeurant que tous ses avoirs qui sont déposés dans les banques suisses doivent être exonérés du paiement de toute taxe à la suite d'un arrangement à intervenir sur la base de l'article 7 du Pacte entre le Gouvernement fédéral et la Société.

J'ose donc espérer, Monsieur le Conseiller fédéral, qu'il vous paraîtra possible, dans ce cas comme dans l'autre, de tenir compte des nécessités tout à fait spéciales créées par l'établissement, sur le territoire suisse, des organismes de la Société des Nations et rendre possible de la sorte à l'Administration financière de la Société ses rapports avec les banques suisses.

APPENDIX 3

DIPLOMATIC IMMUNITIES: CIRCULAR TO MEMBERS OF THE LEAGUE SECRETARIAT ¹

January 30th, 1927

In application of Article 7 of the Covenant the Swiss authorities recognise League officials belonging to the extraterritorial personnel

¹ League of Nations, Office Circular 5/1927.

(holders of pink *cartes de légitimation*) as exempt from the local civil and criminal jurisdiction unless this immunity is waived. Other officials only have such exemption in respect of acts performed in the actual exercise of their official functions.

The above-mentioned diplomatic immunity is not a personal right of the official but belongs to his office.

It follows that the immunity can legally not be waived without the consent of the League represented in the case of the Secretariat by the Secretary-General.

The object of the immunity is to protect the official in the performance of the duties of his office. Accordingly, if an official should find himself in a position in which the maintenance of the immunity would expose him to the suspicion of benefitting by it for the purpose of escaping personal or pecuniary liabilities, he may expect that the Secretary-General will consider that the immunity should be waived.

In such a situation, therefore, the official is not justified in stating that he will be ultimately protected by his immunity against any legal proceedings, nor is he authorised to waive his immunity without reserving the rights of the Secretary-General. If an amicable settlement of the affair is not possible without raising any question of diplomatic immunity, the official's proper course, if he considers that his submitting to the jurisdiction will not affect any League interest, is to state that he waives his immunity subject to the approval of the Secretary-General and to report the case at once to the Director of the Legal Section. If the official, on the other hand, considers that some League interest may be affected, he should claim immunity pending the decision of the Secretary-General.

The ordinary case in which, in principle, the Secretary-General will consider that immunity should be waived, and in which accordingly the official should waive his immunity with the above reservation, is the case of claims arising out of the ordinary transactions and incidents of the official's daily life and unconnected with his discharge of his duties (claims arising out of contracts into which he has entered, out of street accidents, etc.). An official must never in such cases allow his diplomatic immunity to be used as a means of pressure upon the claimant. It is also proper for officials to undertake, subject to the Secretary-General's consent, to facilitate the administration of justice by giving evidence in the courts. Finally, if an official should find himself connected with an incident which is the subject of enquiry by the police, he should facilitate such enquiry as far as possible, short of consenting to any measures which would conflict with his official duties, but, if any waiver of immunity is involved, he must reserve the right of the Secretary-General, when

the matter is reported to the latter, to claim immunity from any proceedings inconsistent with the interests of the League.

As legal proceedings by an official involve his submission to the jurisdiction of the courts, officials should obtain the consent of the Secretary-General before taking such proceedings themselves.

It is the duty of officials to conduct themselves so as to avoid as far as possible situations in which the maintenance of their diplomatic immunity would expose them to the suspicion of using it for their own convenience or protection (see Article 1, paragraph 3, of the Staff Regulations).²

Initialled (E.D.)
Secretary-General

APPENDIX 4

CIRCULAR TO THE LEAGUE SECRETARIAT REGARDING THE RIGHTS CONFERRED AND THE OBLIGATIONS IMPOSED UPON MEMBERS OF THE SECRETARIAT OF THE LEAGUE OF NATIONS BY ARTICLE 7 OF THE COVENANT

Geneva, May 1st, 1928

This Circular is issued for the purpose of calling the attention of the Staff of the Secretariat to the special status of the officials of the League of Nations, and of supplying them with the necessary information regarding the diplomatic privileges and immunities to which they are entitled.

The Secretary-General is confident that the officials of the Secretariat will always scrupulously observe the provisions set out below, and that they will constantly bear in mind the obligations which their privileged position imposes upon them. He would further remind the members of the staff that, notwithstanding the immunities which they enjoy, they are bound to observe the laws and regulations in force in Switzerland and that, in particular, they must scrupulously comply with all provisions regarding public safety and

² "In so far as an official of the Secretariat is entitled to diplomatic privileges and immunities, in virtue of Article 7 of the Covenant of the League of Nations, such privileges and immunities imply a corresponding duty in the official to exercise peculiar care in the discharge of private obligations assumed by him and in the due observance of laws and regulations in force for the maintenance of public order and well-being."

the maintenance of order (traffic regulations, police regulations for streets and public places, etc.).

I. *Officials of Nationality other than Swiss*

The staff is divided into two categories:

A — Members of the first category (in possession of pink identity cards).

B — Members of the second category (in possession of blue identity cards).

A. — *Members of the First Category, "Extra-Territorial Staff"*

This part of the staff enjoys in principle the same diplomatic privileges and immunities as are granted to the Diplomatic Corps at Berne, *i.e.*:

(1) Immunity from civil and criminal jurisdiction in Switzerland unless such immunity is waived. Should the question of waiver arise, the Secretary-General should be consulted beforehand by the official concerned.¹

It need hardly be added that administrative or disciplinary action involving, in certain contingencies, even the dismissal of the official, may be taken, if necessary, by the Secretary-General.

This immunity does not preclude the lodging of a complaint with the official's national authorities should such action appear desirable, although it is of course always understood that the officials of the League of Nations are not in any way responsible, as regards their duties, to any national government.

(2) Fiscal immunity: general exemption from direct personal taxes and taxes on luxuries, general taxes on property whether in the form of capital or income, and from war-taxes (*décimes de guerre*).

This does not apply to charges *in rem* on immovable property (land tax) and to death duties to which they may be liable as heirs or legatees of a person who has died in Switzerland, or as beneficiaries by a gift *inter vivos*, where the donor was domiciled in Switzerland, it being understood that the transfer *mortis causa* or by gift *inter vivos* of property belonging to officials enjoying diplomatic privileges continues to be exempted from all taxation.

By a Decree dated June 14th, 1921, of the Council of State of the Republic and Canton of Geneva, the members of the first category

¹ For all details see Office Circular 5/1927 of January 30th, 1927. [Appendix 3, above.]

of the staff are exempt within the Canton of Geneva from the payment of:

- (a) The tax on professional revenue (*traitement*) i.e., earned income (salaries).
- (b) Tax on fortune or revenue, i.e., property or income.
- (c) *Taxes accessoires on somptuaires*, i.e., incidental taxes and taxes on luxuries, not including shooting and fishing licences.

The staff of the Secretariat are, moreover, exempt from the Emergency Federal War-Tax. (Federal Decree dated September 28th, 1920.)

All charges due to the Swiss authorities for services rendered must be paid should application for such payment be made. For example, the cost price of a motor-car plate, charges for inspecting motor-cars and boats, registry-office fees and Chancellery fees (legal documents, issue of deeds), fees for registration of marriage particulars and for entries in the land register, and Court fees may be mentioned.

(3) Privileges regarding Customs and visa formalities:

The following are permitted to introduce free of Customs duty all articles intended for their personal use: the Secretary-General of the League of Nations, the Assistant Secretary-General, Under-Secretaries-General and Directors. The baggage of these officials is also, in principle, not subject to examination by Customs officers.

The members of the first category of the staff, excluding the Secretary-General, the Assistant Secretary-General, Under-Secretaries-General and Directors, are entitled to introduce free of duty only new articles required when they first establish a home (*première installation*), etc. (To obtain this franchise, please consult the Establishment Officer.)² The formalities connected with the examination of the luggage of such officials by Customs officers are, however, to be limited to what is absolutely necessary.

The members of this category of the Staff are entitled to diplomatic visas on their passports.

(4) Permits for temporary or permanent residence (*permis de séjour ou d'établissement*).

Members of the Staff are exempt from the obligation of reporting in person to the police authorities directly and submitting their identity papers.

Any person who claims exemption from the obligation of reporting to the police and submitting his papers, but whose name does not

² For regulations regarding Customs see Office Circulars 56 and 56a of October 5th, 1926.

appear in the official lists communicated by the Secretariat, can be called upon to furnish evidence of his status as an official. In such a case the identity card issued by the Political Federal Department, or an official statement on the part of the Secretariat, will be regarded as sufficient evidence.

The wife, children, parents and parents-in-law of an official in this category enjoy the same privileges as the official in regard to *permis de séjour ou d'établissement*, provided they reside with the official and do not exercise any vocation.

Domestic employees of this category of the staff (governesses, housekeepers, domestic servants, private secretaries) are subject to the Federal and Cantonal regulations with regard to temporary or permanent residence.

Only the domestic employees of the high officials mentioned below are, provisionally, exempt from the obligation of reporting in person to the police authorities: the Secretary-General, the Assistant Secretary-General, Under-Secretaries-General and Directors.

The wife and children of an official of the first category are, as a general rule, granted the same status as the head of the family, provided they reside with him and do not exercise any vocation in Geneva.

In order to afford the families of members of the Secretariat of the first category facilities for staying in Switzerland elsewhere than at Geneva, the Federal Political Department at Berne has kindly consented, upon receiving notice from the Secretariat, to inform the cantonal authority concerned directly, in order to prevent requests to take out *permis de séjour*, claims for taxation, etc., from being sent to such persons.

Any officials of the Secretariat intending to send members of their family for more than three months to a place in Switzerland other than Geneva are accordingly recommended to give notice beforehand to the Establishment Office, which will forward such information to Berne. The Federal Political Department recommends that persons taking advantage of these facilities should see that their passports, which will be visaed by the Federal Political Department, are in order, and requests them to hand them to the authorities on demand.

B. — *Members of the Staff of the Second Category*³

(a) Complete immunity in respect of acts performed in their official capacity and within the limits of their duties.

³ For regulations regarding Customs see Office Circulars 56 and 56a of October 5th, 1926.

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They are, however, subject to local laws and jurisdiction in respect of acts performed in their private capacity.

(b) Permits of residence (*permis de séjour*):

Officials of this category are exempt from the obligation of reporting in person to the police authorities and submitting their identity papers.

The wife, children, parents and parents-in-law of a member of the staff of the second category enjoy the same privileges, provided they reside with him and do not exercise any vocation.

What is said above with regard to officials of the first category whose names do not appear in the list of the staff applies equally to the second category of the staff.

The ruling given above concerning families of members staying in Switzerland elsewhere than at Geneva also applies in this case.

(c) Fiscal immunity:

Staff of the second category are exempt from the payment of:

1. Tax on professional revenue (*traitement*), *i.e.*, earned income (salaries).
2. Tax on "fortune", *i.e.*, property or income.

The members of this category are, moreover, exempt from payment of the Emergency Federal War-Tax imposed by the Federal Decree, dated September 28th, 1920.

The same regulations as for officials of the first category apply to payment of charges due to the Swiss authorities for services rendered (see above).

The wife and children of a member of the staff of the second category are, as a general rule, granted the same status as the head of the family, provided they reside with him and do not exercise any vocation in Geneva.

II. *Swiss Members of Staff*

Members of the Secretariat who are Swiss nationals are regarded by the Swiss Government as occupying a position distinct from that of the so-called "extra-territorial" staff and the second category of staff. As a general rule, therefore, they do not enjoy the same advantages and privileges as attach to those grades.

It should, however, be mentioned that Swiss nationals who are officials of the League of Nations enjoy the following privileges:

- (1) Immunity from jurisdiction in respect of acts performed in their official capacity and within the limits of their duties;

(2) Exemption, under the Decree of the Council of State, dated June 14th, 1921, within the Canton of Geneva, from the payment of the *taxe sur le revenu professionnel* on the salary which they receive from the League of Nations.⁴

Further, subject to the fulfilment of all the formalities prescribed in the legal provisions relating to votes and elections (deposit of certificates of origin, declaration, etc.) they are exempt from the obligation to take out a *permis de séjour* or a *permis d'établissement*.

III. Traffic Regulations and Public Safety

The *Règlement général* (General Regulations) for traffic and public safety applies to all officials and employees of the League of Nations.

Officials of the Secretariat, to whatever class they may belong, are therefore bound, particularly for purposes of travel in the Canton of Geneva and throughout Switzerland, to carry out the usual formalities (driving tests and inspection of cars in the case of motor-cars, inspection of boats, number-plates for motor-cars and bicycles).

It is understood, however, that officials holding international motor-car licences issued by their national authorities, or driving licences from their national authorities which entitle them to international motor-car licences without further driving test, may, on presentation of these documents, when such documents have been issued after a driving test has been passed before the national authority, take out the Geneva licence without a further driving test.

Cars belonging to officials of the first category are provided with a distinctive mark in addition to the usual number-plate; this distinctive mark, however, is optional.

IV. Offences

The extra-territorial staff (Category I) is not liable to appear before the Swiss Courts. If, however, breaches of the Swiss laws and regulations should take place, the Secretary-General will not fail to take administrative or disciplinary measures, including dismissal if necessary, against the delinquents.

V. Miscellaneous

Officials of the League of Nations are particularly requested (though no arrangement has been made on this subject with the

⁴ For the Federal War-Tax and Federal Military Tax see Office Circular 57/1926 of October 7th, 1926, which also gives information about military service.

Federal or the Cantonal Government) to take every precaution to avoid incurring, by contract, any liability for the fulfilment of obligations which might be incompatible with their position in the Secretariat at Geneva.

It seems desirable, for instance, that a special clause should be inserted in leases to provide for the cancellation of the lease as a result of an unexpected departure, whether due to removal of the seat of the League of Nations outside the Canton of Geneva or to the despatch of the official on other League of Nations duty, or in case of the death or dismissal of the lessee.

Lists of members of the staff enjoying diplomatic immunities will be drawn up from time to time by the Establishment Office. These lists will be sent to the authorities at Berne, who will circulate them to the various administrative services of the Confederation and the Canton of Geneva.

As it is highly desirable that the lists in the possession of the Swiss authorities should be as complete as possible, officials of the Secretariat are particularly requested to keep the Establishment Office informed of alterations, changes of address, etc.

(Signed) ERIC DRUMMOND

ANNEX III

GENERAL PRINCIPLES AND RULES OF APPLICATION REGULATING THE EXTERNAL STATUS OF THE MEMBERS OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE¹

Agreed between the Netherlands Minister for Foreign Affairs and the President of the Court; and submitted to and approved by the Council of the League of Nations, June 5th, 1928.

GENERAL PRINCIPLES

I

The diplomatic privileges and immunities which, under Article 19 of the Statute of the Permanent Court of International Justice, the Netherlands authorities grant to the Members of the Court are the same as they accord in general to heads of missions accredited to Her Majesty the Queen of the Netherlands.

The special facilities and prerogatives which the Netherlands authorities grant, in general, to heads of missions accredited to Her Majesty the Queen of the Netherlands will be extended to the members of the Court.

As regards both diplomatic immunities and privileges and these special facilities, the Registrar of the Court will be placed on the same footing as the members of the Court.

II

In view of Article 7, paragraph 4, of the Covenant of the League of Nations, the higher officials of the Court will be accorded, in principle, as regards diplomatic immunities and privileges, the same status as diplomatic officials attached to the Legations at The Hague.

III

The Permanent Court of International Justice will hold, in relation to the Netherlands authorities, a position similar to that of the *Corps diplomatique*.

When the *Corps diplomatique* and the Court are invited to attend Netherlands official ceremonies at the same time, the Court will rank immediately after the *Corps diplomatique*.

¹ *Official Journal*, 1928, pp. 985-87.

IV

A member of the Court not a national of the Netherlands will be given precedence, in relation to the Netherlands authorities, as though he were an Envoy Extraordinary and Minister Plenipotentiary accredited to Her Majesty the Queen of the Netherlands.

The position of the Registrar of the Court in this respect will be the same as that of the Secretary-General of the Permanent Court of Arbitration, as established by practice.

V

The above principles will be supplemented and defined by Rules of Application.

RULES OF APPLICATION

I

Without prejudice to the rules previously laid down in communications from the Netherlands Ministry of Foreign Affairs and addressed to the authorities of the Court before November, 1927, the principles governing the external status of the members and officials of the Court are supplemented and defined by the following provisions:

A. — *Members and Registrar of the Court*

II

1. *In General*

As regards the precedence of the members of the Court among themselves, the Netherlands authorities will observe the regulations contained in the Rules of Court.

2. *Not of Netherlands Nationality*

(a) The members and Registrar of the Court will enjoy, when in Netherlands territory, the diplomatic immunities and privileges granted, in general, to heads of diplomatic missions accredited to Her Majesty the Queen of the Netherlands.

(b) The wife and unmarried children of the members and Registrar of the Court will share the status of the head of the family if they live with him and have no other occupation.

(c) The private staff (governesses, housekeepers, private secretaries, servants, etc.) of the members and Registrar of the Court will enjoy the same position as that accorded to the private staff of the

heads of diplomatic missions accredited to Her Majesty the Queen of the Netherlands.

3. *Of Netherlands Nationality*

The members and Registrar of the Court will not be answerable in the local courts for acts done by them in their official capacity and within the limits of their powers. The salaries paid to them out of the budget of the Court will be exempt from direct taxes.

B. — *Deputy-Registrar and Officials of the Court*

III

1. *In General*

(a) The higher officials of the Court at present include, in addition to the Deputy-Registrar, the drafting secretaries.

(b) Any questions concerning the external status of all categories of officials of the Court shall, in case of doubt, be settled by referring, as far as possible, to the provisions duly approved by the competent authorities of the League of Nations for the corresponding officials of the League institutions established at Geneva.

(c) The Netherlands authorities will not object to the competent authorities of the Court issuing identity cards to officials of the Court belonging to the various categories, so that these officials can, if need be, immediately furnish evidence of their external status according to the present Principles and Rules.

2. *Not of Netherlands Nationality*

(a) The higher officials of the Court will enjoy, when in Netherlands territory, the diplomatic immunities and privileges granted in general to the diplomatic officials attached to the Legations at The Hague.

(b) The wife and unmarried children of the higher officials of the Court will share the status of the head of the family if they live with him and have no other occupation.

(c) The private staff of higher officials of the Court will enjoy the same position as that accorded to the private staff of diplomatic officials attached to the Legations at The Hague.

(d) In the event of an official of the Court infringing a law or regulation, the Registrar of the Court may, with the President's approval, after the case has been examined by the competent national authorities and a detailed report submitted to the Registrar, waive the immunity accorded to the official.

(e) As regards precedence in the case of higher officials of the Court, the Deputy-Registrar will be on the same footing as a councillor attached to a Legation at The Hague, and the drafting secretaries as secretaries attached to Legations at The Hague.

3. *Of Netherlands Nationality*

Higher officials will not be answerable in the local courts for acts done by them in their official capacity and within the limits of their powers. The salaries paid to them out of the budget of the Court will be exempt from direct taxes.

ANNEX IV

CANADIAN ORDER IN COUNCIL OF 14 AUGUST, 1941, RELATIVE TO THE PRIVILEGES AND IMMUNITIES OF THE INTERNATIONAL LABOR OFFICE AND ITS STAFF

ORDER IN COUNCIL AT THE GOVERNMENT HOUSE AT OTTAWA
Thursday, the 14th day of August, 1941
Present:

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL

Whereas the Secretary of State for External Affairs, with the concurrence of the Minister of Labour, reports,

(1) That by Article 7 of the Covenant of the League of Nations and Article 6 of the Constitution of the International Labour Organisation, the International Labour Office as part of the organisation of the League enjoys diplomatic privileges and immunities;

(2) That by reason of the ratification of the Treaties of Peace, the provisions of the Covenant of the League of Nations and of the Constitution of the International Labour Organisation constitute obligations of Canada as part of the British Empire towards foreign countries within the meaning of Section 132 of the British North America Act, 1867;

(3) That Section 1 of The Treaties of Peace Act, 1919 (10 George V., Chap. 30) empowers the Governor in Council to make such Orders in Council and do such things as appear to him to be necessary for carrying out these Treaties and for giving effect to any of their provisions;

(4) That with the approval of the Canadian Government, the Director of the International Labour Office has transferred a part of the staff of the International Labour Office to Montreal in order to permit of the continuation of the work of the International Labour Office in present circumstances; and

(5) That it is therefore desirable to define in certain respects the status in Canada of the International Labour Office and its staff.

Therefore, His Excellency the Governor General in Council, on the recommendation of the Secretary of State for External Affairs, and under and by virtue of The Treaties of Peace Act, 1919, is pleased to order and doth hereby order as follows:

1. This Order may be cited as "The Treaties of Peace (Status of the International Labour Office) Order, 1941."

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2. The International Labour Office shall have legal capacity to conclude contracts and to assume and discharge obligations.

3. The International Labour Office shall have the right to sue and be sued, but no suit or other proceeding (other than a proceeding by way of set-off, counter-claim or cross-action) against the International Labour Office shall be entertained by any court without the express consent in writing of the Director of the International Labour Office.

4. The premises occupied by the International Labour Office are inviolable, that is to say, no peace officer, sheriff, bailiff, member of the armed forces, or other public authority of like nature, may enter them, in the exercise of his duties, without the consent of the Director of the International Labour Office.

5. The archives of the International Labour Office are inviolable.

6. (1) The members of the International administrative staff of the International Labour Office shall enjoy immunity from civil and criminal jurisdiction in Canada unless such immunity is waived by the Director of the International Labour Office.

(2) The list of the members of the international administrative staff shall be published from time to time in the Canada Gazette by the Secretary of State for External Affairs.

(3) The other members of the staff of the International Labour Office shall enjoy exemption from civil and criminal jurisdiction in Canada in respect of acts performed by them in their official capacity and within the limits of their functions unless such immunity is waived by the Director of the International Labour Office; but they shall be subject to the jurisdiction of the Canadian Courts in respect of acts performed by them in their private capacity.

7. The International Labour Office and all salaries paid by the International Labour Office to permanent members of its staff shall be exempt from all direct taxes imposed by the Parliament or Government of Canada, such as income tax and National Defence Tax.

Provided that this exemption shall not apply to salaries paid to temporary members of the staff, that is to say, members whose contracts of employment with the International Labour Office were made for a period of less than one year.

A. D. P. HEENEY
Clerk of the Privy Council

ANNEX V

STUDY ON PRIVILEGES AND IMMUNITIES TRANSMITTED BY THE PREPARATORY COMMISSION OF THE UNITED NATIONS TO THE FIRST PART OF THE FIRST SESSION OF THE GENERAL ASSEMBLY¹

Provisions of the Charter

1. Chapter XVI of the Charter contains the following provisions:

Article 104. — The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

Article 105. — 1. The Organization shall enjoy in the territory of each of its members such privileges and immunities as are necessary for the fulfilment of its purposes.

2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.

Privileges and Immunities at the seat of the Organization and elsewhere

2. The question of privileges and immunities for the United Nations is of the greatest importance in connection with the country in which the United Nations has its seat. In the case of the League of Nations, including the International Labour Organization, the Covenant of the League contains only the following short provision in Article 7:

Representatives of the Members of the League and officials of the League, when engaged on the business of the League, shall enjoy diplomatic privileges and immunities.

As a result, all the detailed arrangements for the privileges and immunities of the League of Nations and the I.L.O. were worked out in agreements concluded between the Secretary-General of the League and the Swiss Government. It would seem desirable that the

¹ *Report of the Preparatory Commission of the United Nations* (Preparatory Commission of the United Nations, 1945), Chap. VII, pp. 61-71.

working out of the detailed privileges and immunities of the United Nations should be deferred until the question of its seat has been decided.

3. However, although the question of privileges and immunities arises in the greatest degree as between the United Nations and the country in which it has its seat, the same question arises as between the Organization and all its Members. The difference is one of degree rather than one of kind. The United Nations may have offices elsewhere than at its seat. The officials of the Organization may be travelling on its business in any part of the world. The United Nations may wish to conclude contracts and hold funds or property elsewhere than at its seat. For these and similar reasons, therefore, the Organization will require, in the territories of all Members, the same kind of privileges and immunities as it has in the country of its seat.

Precedents afforded by the Constitutions of Specialized Agencies

4. A number of specialized agencies is already in existence. Their constitutions, or the agreements under which they are set up, have for the most part detailed provisions with regard to privileges and immunities based to a large extent on the arrangements made between the League of Nations and the Swiss Government. These specialized agencies include the following: The International Monetary Fund (Article IX), the International Bank for Reconstruction and Development (Article VII), United Nations Relief and Rehabilitation Administration (Resolutions Nos. 32, 34 and 36 of the first session of the Council), Food and Agriculture Organization (Articles VIII and XV), European Central Inland Transport Organization (Article VIII, paragraphs 13, 14, 15, 16, 17). These provisions are on the same lines in each case, though in some instances they have been worked out in more detail than in others.

Co-ordination of the Privileges and Immunities of the United Nations with those of Specialized Agencies

5. There are many advantages in the unification, as far as possible, of the privileges and immunities enjoyed by the United Nations and the various specialized agencies. On the other hand, it must be recognized that not all specialized agencies require all the privileges and immunities which may be needed by others. No specialized agency would, however, require greater privileges than the United Nations itself. The privileges and immunities, therefore, of the United Nations might be regarded as a maximum within which the various specialized agencies should enjoy just such privileges and immunities

as the proper fulfilment of their respective functions may require. It should be a principle that no immunities and privileges, which are not really necessary, should be asked for. An example of a case where a differentiation has been made between immunities, for practical reasons, may be seen by comparing Section 3 of Article IX of the Articles of Agreement of the International Monetary Fund, and Section 3 of Article VII of the Articles of Agreement of the International Bank for Reconstruction and Development. There are certain privileges and immunities which probably every specialized agency would require as well as the United Nations itself, such as recognition that it possesses legal capacity to contract and to hold property, and to be a party to legal proceedings, the immunity of its premises and papers, and the granting of travelling facilities to its officials. When the privileges and immunities of the United Nations have been determined in detail, and the specialized agencies are being brought into relationship with the United Nations, reconsideration of the privileges and immunities accorded to such specialized agencies may be desirable if it is found that they enjoy privileges and immunities in excess of those to be given to the United Nations or of what is really required.

Creation of an International Passport

6. In order to facilitate the travelling of officials it may be found desirable to institute an international passport issued by the Organization, describing the holder as its official. The United Nations might issue such passports also to the senior officials of specialized agencies. The creation of this passport would not, of course, impair the sovereign rights of members of the United Nations in respect of the granting of visas. It might, however, be hoped that any necessary visas would be granted speedily. Member governments are already required to grant visas speedily under the constitutions of some specialized agencies. It may be desirable to confine the holding of these special passports to superior officials.

Privileges and Immunities

7. In this report the expression "diplomatic privileges and immunities" is used for convenience to describe the whole complex of privileges and immunities which are in fact accorded to diplomatic envoys. While it will clearly be necessary that all officials, whatever their rank, should be granted immunity from legal process in respect of acts done in the course of their official duties, whether in the country of which they are nationals or elsewhere, it is by no means

necessary that all officials should have diplomatic immunity. On the contrary, there is every reason for confining full diplomatic immunity to the cases where it is really justified. Any excess or abuse of immunity and privilege is as detrimental to the interests of the international organization itself as it is to the countries who are asked to grant such immunities. In the case of existing specialized agencies, the practice has up to now been to confine diplomatic immunity to the senior official of the agency concerned and those of his assistants, whose rank is equivalent to that of Assistant Secretary-General. (In the case of the I.L.O. the range of officials to whom diplomatic immunity has been accorded is somewhat wider.) It is also a principle that no official can have, in the country of which he is a national, immunity from being sued in respect of his non-official acts and from criminal prosecution. It is further most desirable that both the United Nations and all specialized agencies should adopt the principle that privileges and immunities are only given to their officials in the interests of the Organization in whose service they are, and in no way for the benefit of the individual concerned, and that, in consequence, the Secretary-General both can waive immunity and will in fact do so in every case where such a course is consistent with the interests of the United Nations. This rule has long been in force in the International Labour Organization. It has been accepted by most of the new specialized agencies which have come into being. Similarly, it is desirable that where the United Nations or a specialized agency concludes contracts with private individuals or corporations, it should include in the contract an undertaking to submit to arbitration disputes arising out of the contract, if it is not prepared to go before the Courts. Most of the existing specialized agencies have already agreed to do this.

Taxation of Officials in the State of which they are Nationals

8. The provisions in the agreements or constitutions of the new specialized agencies, while providing in general that no taxation should be levied on the salaries of officials, leave complete latitude to governments to tax the salaries of officials who are their own nationals or persons resident in their territory. As a result, the Act of Parliament of the United Kingdom which was passed to enable the United Kingdom to give effect to its obligations as regards privileges and immunities for international organizations (the Diplomatic Privileges Extension Act, 1944) excepts from the immunity from income tax the salaries of those international officials who are both British subjects and whose usual place of abode is in the United Kingdom. A similar practice has been followed in certain other

countries. It is, however, a matter for consideration whether this latitude or this exception are really sound. One of its effects is that some of the members of the staff have salaries which are tax free, because being resident outside their own states they do not fall under the income tax provisions of their own state, while other officials doing the same work for the same nominal salary are subject to income tax. This has led to certain administrative difficulties and has indeed raised the question whether the United Nations should not pay some special allowance to those of its employees who are paying income tax, in order to produce equality.

The International Court of Justice

9. The above paragraphs do not apply to the International Court of Justice. The Statute of the Court provides:

Article 19. — The members of the Court, when engaged upon the business of the Court, shall enjoy diplomatic privileges and immunities.

Article 32 — Paragraph 8. — The above salaries, allowances and compensation shall be free of all taxation.

Article 42 — Paragraph 3. — The agents, counsel, and advocates of parties before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties.

When the first and second of these paragraphs (which correspond to the provisions of the Statute of the Permanent Court, whereas the third is new) are compared with paragraph 2 of the above quoted Article 105 of the Charter of the United Nations, it seems clear that the members of the Court, when engaged in the business of the Court, are to enjoy diplomatic privileges and immunities in the fullest sense. This has been the case with the members of the Permanent Court. For that institution the details of the privileges and immunities to be accorded at the seat of the Court were settled by negotiations between the Court itself and the Netherlands Government. It would seem desirable to postpone consideration of the subject until the Court can be consulted. It is therefore suggested that, for the first session of the Court, the rules applicable to the members of the Permanent Court should be observed, and that the new Court should then be invited to state whether changes are in their opinion required and, if this be the case, whether they wish the General Assembly to act on their behalf.

It would also appear expedient to consult the Court upon the privileges and immunities necessary for its members when engaged on the Court's business outside the country of its seat.

Finally, the question of the privileges and immunities of agents, counsel and advocates of parties before the Court would seem to be a

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matter which should only be taken up after it has been possible to consult the Court. It is not likely to arise at the first session.

[APPENDIX]

IMMUNITIES AND PRIVILEGES GRANTED TO THE ORGANIZATION, REPRESENTATIVES OF THE MEMBERS, AND OFFICIALS IN ACCORDANCE WITH THE CONSTITUTIONS OF THE INTERNATIONAL MONETARY FUND — THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT — UNITED NATIONS RELIEF AND REHABILITATION ADMINISTRATION — FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS — AND EUROPEAN CENTRAL INLAND TRANSPORT ORGANIZATION ¹

Status of the Organization

Purposes of the Immunities and Privileges

1. International Monetary Fund (Article IX — Section 1) and International Bank for Reconstruction and Development (Article VII — Section 1):

To enable the Fund/Bank to fulfil the functions with which it is entrusted the status, immunities and privileges set forth in this Article shall be accorded to the Fund in the territories of each member.

2. United Nations Relief and Rehabilitation Administration (Resolution 32):

Whereas the Council is desirous of insuring to the Administration and its agents the independence necessary for the efficient performance of the duties entrusted to them, and of avoiding the imposition of financial burdens upon the funds contributed by member governments to the Administration;

Legal Status of the Organization

3. International Monetary Fund (Article IX — Section 2), International Bank for Reconstruction and Development (Article VII — Section 2):

The Fund/Bank shall possess full juridical personality, and, in particular, the capacity: (i) to contract; (ii) to acquire and dispose of immovable and movable property; (iii) to institute legal proceedings.

¹ A *Proposed Resolution concerning Facilities for the Efficient Discharge of the Responsibilities Entrusted to the International Labour Organisation*, submitted by the I.L.O. to the International Labor Conference held at Philadelphia in April, 1944, has been under consideration by the Constitutional Committee of the Governing Body of the I.L.O.

4. Food and Agriculture Organization (Article XV):

1. The Organization shall have the capacity of a legal person to perform any legal act appropriate to its purpose which is not beyond the powers granted to it by this Constitution.

5. European Central Inland Transport Organization (Article 8 — paragraphs 1 and 3):

Every member Government shall recognize the international personality and legal capacity which the Organization possesses.

Immunities from Judicial Process

6. International Monetary Fund (Article IX — Section 3):

The Fund, its property and its assets, wherever located and by whomsoever held, shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any proceedings or by the terms of any contract.

7. International Bank for Reconstruction and Development (Article VIII — Section 3):

Actions may be brought against the Bank only in a court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

8. United Nations Relief and Rehabilitation Administration (Resolution 32 — paragraph 1 — point 1 (a)) :

That the Council recommends:

1. That the member governments accord to the Administration the facilities, privileges, immunities and exemptions which they accord to each other, including: (a) Immunity from suit and legal process except with the consent of, or so far as is provided for in any contract entered into by or on behalf of, the Administration.

9. Food and Agriculture Organization (Article XV — paragraph 2) :

Each member nation undertakes, in so far as it may be possible under its constitutional procedure, to accord to the Organization all the immunities and facilities which it accords to diplomatic missions, including inviolability of premises and archives, immunity from suit, and exemptions from taxation.

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10. European Central Inland Transport Organization (Article 8 — paragraph 3 (a)):

Every member Government shall accord to the Organization the privileges, immunities, and facilities which they grant to each other, including in particular: (a) immunity from every form of legal process.

Immunities from Search, Requisition, Confiscation, Expropriation, or any other Form of Seizure

11. International Monetary Fund (Article IX — Section 4) and International Bank for Reconstruction and Development (Article VII — Section 4):

Property and assets of the Fund/Bank, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation, or any other form of seizure by executive or legislative action.

12. United Nations Relief and Rehabilitation Administration (Resolution 32):

I. That the Council recommends:

1. That the member governments accord to the Administration the facilities, privileges, immunities and exemptions which they accord to each other including: (b) inviolability of premises occupied by and of the archives of the Administration.

13. Food and Agriculture Organization (Article XV — Section 2):

Each Member nation undertakes, in so far as it may be possible under its constitutional procedure, to accord to the Organization all the immunities and facilities which it accords to diplomatic missions, including inviolability of premises and archives, immunity from suit and exemptions from taxation.

14. European Central Inland Transport Organization (Article 8 — paragraph 3 (c)):

Every member Government shall accord to the Organization the privileges, immunities and facilities which they grant to each other, including in particular: (c) inviolability of premises occupied by, and of the archives and communications of the Organization.

Inviolability of Archives

15. International Monetary Fund (Article IX — Section 5) and International Bank for Reconstruction and Development (Article VII — Section 5):

The archives of the Fund/Bank shall be inviolable.

16. United Nations Relief and Rehabilitation Administration (Resolution 32):

I. That the Council recommends:

1. That the member governments accord to the Administration the facilities, privileges, immunities and exemptions which they accord to each other including: (b) Inviolability of premises occupied by and of the archives of the Administration.

17. Food and Agriculture Organization (Article XV — Section 2):

Each member nation undertakes, in so far as it may be possible under its constitutional procedure, to accord to the Organization all the immunities and facilities which it accords to diplomatic missions, including inviolability of premises and archives, immunity from suit, and exemptions from taxation.

18. European Central Inland Transport Organization (Article 8 — paragraph 4 (c)):

Every member Government shall accord to the Organization the privileges, immunities and facilities which they grant to each other, including in particular: (c) inviolability of premises occupied by, and of the archives and communications of the Organization.

Immunity of Assets from Restrictions

19. International Monetary Fund (Article IX — Section 6):

To the extent necessary to carry out the operations provided for in this Agreement, all property and assets of the Fund shall be free from restrictions, regulations, controls and moratoria of any nature.

20. International Bank for Reconstruction and Development (Article VII — Section 6):

To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of this Agreement, all property and assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.

Immunity from taxation

21. International Monetary Fund (Article IX — Section 9a and c):

(a) The Fund, its assets, property, income and its operations and transactions authorized by this agreement, shall be immune from all taxation and from all customs duties. The Fund shall also be immune from liability for the collection or payment of any tax or duty.

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(c) No taxation of any kind shall be levied, on any obligation or security issued by the Fund, including any dividend or interest thereon, by whomsoever held (i) which discriminates against such obligations or security solely because of its origin; or (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Fund.

22. International Bank for Reconstruction and Development (Article VII — Section 9a, c, d):

(a) The Bank, its assets, property, income and its operations and transactions authorized by this Agreement, shall be immune from liability for the collection or payment of any tax or duty.

(c) No taxation of any kind shall be levied on any obligation or security issued by the Bank (including any dividend or interest thereon) by whomsoever held (i) which discriminates against such obligation or security solely because it is issued by the Bank; or (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.

(d) No taxation of any kind shall be levied on any obligation or security guaranteed by the Bank (including any dividend or interest thereon) by whomsoever held (i) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or (ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

23. United Nations Relief and Rehabilitation Administration (Resolution 32):

1. That the Council recommends:

1. That the member governments accord to the Administration the facilities, privileges, immunities, and exemptions which they accord each other, including:

(c) Exemptions from taxation, including customs duties.

24. Food and Agriculture Organization (Article XV — paragraph 2):

Each member nation undertakes, insofar as it may be possible under its constitutional procedure, to accord to the Organization all the immunities and facilities which it accords to diplomatic missions, including inviolability of premises and archives, immunity from suit, and exemptions from taxation.

25. European Central Inland Transport Organization (Article 8 — paragraph 3b):

Every member government shall accord to the Organization the privileges, immunities and facilities which they grant to each other, including in particular: (b) exemption from taxation and customs duties.

Immunity from Foreign Exchange Controls

26. International Monetary Fund (Article VII — Section 6) and International Bank for Reconstruction and Development (Article VII — Section 6):

To the extent necessary to carry out the operations provided for in this Agreement all property and assets of the Fund/Bank shall be free from restrictions, regulations, controls and moratoria of any nature.

27. United Nations Relief and Rehabilitation Administration (Resolution 32):

I. That the Council recommends:

1. That the member governments accord to the Administration the facilities, privileges, immunities, and exemptions which they accord to each other, including:

(d) exemptions from or facilities in respect of foreign exchange controls.

Privileges of the Organization

28. International Monetary Fund (Article IX — Section 7) and International Bank for Reconstruction and Development (Article VII — Section 7):

The official communications of the Fund/Bank shall be accorded by members the same treatment as the official communications of other members.

29. United Nations Relief and Rehabilitation Administration (Resolution 34):

Whereas:

The Council recognizes the need for expenditure, economy and secrecy in the transmission of the official correspondence of the Administration; it is therefore

Resolved:

That the Council recommends:

1. That the member governments accord to the official correspondence of the Administration:

(a) the same treatment as is accorded by them to the official correspondence of other member governments, including:

(i) priorities for telephone and telegram communications, whether cable or radio, and for mail transmitted by pouch or by courier;

(ii) government rebates for official telegrams;

(iii) diplomatic status for couriers and pouches of the Administration;

(iv) under appropriate safeguards, exemption from censorship of the official correspondence of the Administration; and

(v) appropriate arrangements for the use of codes and of cable addresses for the telegraphic correspondence of the Administration.

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(b) appropriate postal facilities, including such franking privileges or arrangements for the use of specially printed or overprinted stamps as may be possible.

30. Food and Agriculture Organization (Article XV — Section 2):

Each member nation undertakes, in so far as it may be possible under its constitutional procedure, to accord to the Organization all the immunities and facilities which it accords to diplomatic missions, including inviolability of premises and archives, immunity from suit, and exemption from taxation.

31. European Central Inland Transport Organization (Article 8, paragraph 3):

Every member government shall accord to the Organization the privileges, immunities and facilities which they grant to each other.

Status of Representatives of the Members

32. United Nations Relief and Rehabilitation Administration (Resolution 32):

I. (3). That member governments accord to representatives of member governments on the Council and its committees and to the officials and employees of the Administration when engaged on the business of the Administration, the following privileges and immunities in their respective territories:

(a) immunity from legal process of any kind in respect of acts performed by them in their official capacity and falling within their functions as such;

(b) immunity from taxation on official salaries, allowances, or other emoluments as representatives, officials, or employees of the Administration;

(c) the same immunities from immigration restrictions, alien registration and military service obligations and the same facilities as regards exchange restrictions as are accorded to representatives, officials and employees of similar rank of other member governments; and

(d) any further privileges and immunities that the Director General may request as necessary, to safeguard representatives, officials or employees in the territories of any member government where they are engaged and particularly those engaged in field operations in the areas in which the Administration may be undertaking relief and rehabilitation.

Provided that each member government shall determine to what extent the above recommendations shall apply to its own nationals, and to non-nationals in permanent residence in its territories.

33. European Central Inland Transport Organization (Article 8, paragraph 4):

Every member government shall accord diplomatic privileges and immunities to persons appointed by other members as their representatives

in or to the Organization, to the members of the Executive Board, and to the higher officials of the Organization not being their own nationals.

Status of Officers and Employees

Immunity from legal process

34. International Monetary Fund (Article IX — Section 8 (i)) and International Bank for Reconstruction and Development (Article VII — Section 8):

All governors, executive directors, alternate officers and employees of the Fund/Bank (i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Fund/Bank waives this immunity.

35. United Nations Relief and Rehabilitation Administration (Resolution 32):

I. (3). That member governments accord to representatives of member governments on the Council and its committees and to the officials and employees of the Administration the following privileges and immunities in their respective territories: (a) immunity from legal process of any kind in respect of acts performed by them in their official capacity and falling within their functions as such; . . . Provided that each member government shall determine to what extent the above recommendations shall apply to its own nationals, and to non-nationals in permanent residence in its territories.

36. Food and Agriculture Organization (Article VIII — paragraph 4):

Each member nation undertakes in so far as it may be possible under its constitutional procedure, to accord to the Director-General and senior staff diplomatic privileges and immunities and to accord to other members of the staff all facilities and immunities accorded to non-diplomatic personnel attached to diplomatic missions, or alternatively to accord to such other members of the staff the immunities and facilities which may hereafter be accorded to equivalent members of the staffs of other public international organizations.

37. European Central Inland Transport Organization (Article 8):

Every member government shall accord diplomatic privileges and immunities to persons appointed by other members as their representatives in or to the Organization, to the members of the Executive Board, and to the higher officials of the Organization not being their own nationals.

Every member government shall accord to all officials and employees of the

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Organization: (a) immunity from suit and legal process relating to acts performed by them in their official capacity. . . .

Immunity from immigration restrictions, alien registration, national service obligations, and exchange restrictions.

38. International Monetary Fund (Article IX — Section 8) and International Bank for Reconstruction and Development (Article VII — Section 8):

All governors, executive directors, alternate officers and employees of the Fund/Bank . . . (ii) not being local nationals, shall be granted the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials and employees of comparable rank of other members.

39. United Nations Relief and Rehabilitation Administration (Resolution 32):

1. (3). That member governments accord to representatives of member governments on the Council and its committees and to the officials and employees of the Administration when engaged on the business of the Administration, the following privileges and immunities in their respective territories . . . (c) the same immunities from immigration restrictions, alien registration and military service obligations and the same facilities as regards exchange restrictions as are accorded to representatives, officials and employees of similar rank of other member governments. . . .

Provided that each member government shall determine to what extent the above recommendations shall apply to its own nationals, and to non-nationals in permanent residence in its territories.

40. Food and Agriculture Organization (Article VIII):

4. Each Member nation undertakes, in so far as it may be possible under its constitutional procedure, to accord to the Director-General and senior staff diplomatic privileges and immunities and to accord to other members of the staff all facilities and immunities accorded to non-diplomatic personnel attached to diplomatic missions, or alternatively to accord to such other members of the staff the immunities and facilities which may hereafter be accorded to equivalent members of the staffs of other public international organizations.

41. European Central Inland Transport Organization (Article 8):

Every member government shall accord diplomatic privileges and immunities to persons appointed by other members as their representatives in or to the Organization, to the members of the Executive Board, and to the higher officials of the Organization not being their own nationals.

Travel Facilities

42. International Monetary Fund (Article IX — Section 8):

All governors, executive directors, alternate officers and employees of the Fund . . . (iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank or other members.

43. International Bank for Reconstruction and Development (Article VII — Section 8):

All Governors, executive directors, alternates, officers and employees of the Bank . . . (iii) shall be granted the same treatment in respect of travelling facilities, as is accorded by members to representatives, officials and employees of comparable rank or other members.

44. United Nations Relief and Rehabilitation Administration (Resolution 36):

Whereas

the Council has in mind the importance of securing the expeditious and unhindered travel of officials and employees of the Administration necessary to permit the prompt fulfilment by the Administration of the urgent tasks entrusted to it; it is therefore

Resolved

That the Council recommends:

1. That the Director-General issue to officials and employees of the Administration for use when travelling on official business a document identifying the official or employee and requesting in the name of the Administration that all appropriate facilities be granted to the bearer.

2. That all member governments give full recognition to such documents and instruct their diplomatic, consular, customs and immigration services, and any other services which may be concerned, to recognise such documents as entitling the bearer to all appropriate facilities.

3. That in respect to passports and visas, the member governments accord to the officials and employees of the Administration the same treatment as is accorded to the officials and employees of comparable rank of their own or other governments.

4. That all member governments take the necessary steps to grant all appropriate and possible priorities for the travel of the officials of the Administration on official business and government rebates for such travel.

45. Food and Agriculture Organization (Article VIII — paragraph 4):

Each member nation undertakes, in so far as it may be possible under its constitutional procedure, to accord to the Director-General and senior staff

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diplomatic privileges and immunities and to accord to other members of the staff all facilities and immunities accorded to non-diplomatic personnel attached to diplomatic missions, or alternatively to accord to such other members of the staff the immunities and facilities which may hereafter be accorded to equivalent members of the staff of other public international organizations.

46. European Central Inland Transport Organization (Article 8):

Every member government shall accord to all officials and employees of the Organization: . . . (b) all such facilities for their movements and for the execution of their functions, as are deemed necessary by the Organization for the speedy and effective fulfilment of their official duties. . . .

Immunity from Taxation

47. International Monetary Fund (Article IX — Section 9):

No tax shall be levied on or in respect of salaries and emoluments paid by the Fund to executive directors, alternates, officers or employees of the Fund who are not local citizens, local subjects, or other local nationals.

48. International Bank for Reconstruction and Development (Article VII — Section 9):

(b) No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to executive directors, alternates, officials or employees of the Bank who are not local citizens, local subjects, or other local nationals.

49. United Nations Relief and Rehabilitation Administration (Resolution 32):

3. That member governments accord to representatives of member governments on the Council and its committees and to the officials and employees of the Administration when engaged on the business of the Administration, the following privileges and immunities in their respective territories. . . . (b) immunity from taxation on official salaries, allowances or other emoluments as representatives, officials, or employees of the Administration. . . . Provided that each member government shall determine to what extent the above recommendations shall apply to its own nationals, and to non-nationals in permanent residence in its territories.

50. Food and Agriculture Organization (Article VIII — Section 4):

Each member nation undertakes, in so far as it may be possible under its constitutional procedure, to accord to the Director-General and senior staff diplomatic privileges and immunities accorded to non-diplomatic personnel

attached to diplomatic missions, or alternatively to accord to such members of the staff the immunities and facilities which may hereafter be accorded to equivalent members of the staffs of other public international organizations.

51. European Central Inland Transport Organization (Article 8):

Every member government shall accord diplomatic privileges and immunities to persons appointed by other members as their representatives in or to the Organization, to the members of the Executive Board, and to the higher officials of the Organization not being their own nationals.

Every member government shall accord to all officials and employees of the Organization . . . (c) except in the case of their own nationals, exemption from taxation of their official salaries and emoluments.

Additional Privileges

52. United Nations Relief and Rehabilitation Administration (Resolution 32):

I. (3). That member governments accord to representatives of member governments on the Council and its committees and to the officials and employees of the Administration when engaged on the business of the Administration, the following privileges and immunities in their respective territories: . . . (d) any further privileges and immunities that the Director-General may request as necessary to safeguard representatives, officials, or employees in the territories of any member government where they are engaged and particularly those engaged in field operations in the areas in which the Administration may be undertaking relief and rehabilitation.

Provided that each member government shall determine to what extent the above recommendations shall apply to its own nationals, and to non-nationals in permanent residence in its territories.

53. European Central Inland Transport Organization (Article 8):

Every member government shall accord to all officials and employees of the Organization . . . (b) all such facilities for their movements and for the execution of their functions, as are deemed necessary by the Organization for the speedy and effective fulfilment of their official duties.

Disputes relating to the conditions and terms of appointment of members of the staff

54. Food and Agriculture Organization (Article XV — paragraph 3):

The Conference shall make provision for the determination by an administrative tribunal of disputes relating to the conditions and terms of appointment of members of the staff.

General Obligations of Members

55. United Nations Relief and Rehabilitation Administration (Resolution 32):

I. (2). That member governments take any steps that they may consider necessary to enable the Administration to exercise within their jurisdiction the powers conferred on it by Article I, paragraph 1, of the Agreement.

56. European Central Inland Transport Organization (Article 8):

Every member government shall respect the exclusively international character of the members of the Executive Board, the chief officer and the staff of the Organization.

Application of Aforesaid Provisions

57. International Monetary Fund (Article IX — Section 10):

Each member shall take such action as is necessary in its own territories for the purpose of making effective in terms of its own law the principles set forth in this Article and shall inform the Fund of the detailed action which it has taken.

58. United Nations Relief and Rehabilitation Administration: (Resolution 32):

I. (4). That the member governments make any necessary arrangements with the Director-General for the application of the foregoing recommendations.

II. That the Council requests the Director-General:

1. To initiate immediate negotiations with member governments to bring such arrangements into operation as rapidly as possible.

2. Wherever appropriate, to approach non-member governments with a view to their granting such of the above-mentioned facilities, privileges, immunities and exemptions as may be desirable to facilitate the work of the Administration.

(Resolution 34):

I. (2). That the member governments make any necessary arrangements with the Director-General for the application of the foregoing recommendations.

II. That the Council requests the Director-General:

1. To initiate immediate negotiations with member governments to bring such arrangements into operation as rapidly as possible.

2. Wherever appropriate, to approach non-member governments with a view to their granting such of the above-mentioned facilities, privileges,

immunities, and exemptions as may be desirable to facilitate the work of the Administration.

(Resolution 36) .

I. (5). That the member governments make any necessary arrangements with the Director-General for the application of the foregoing recommendations.

II. To initiate immediate negotiations with member governments to bring such arrangements into operation as rapidly as possible.

2. Wherever appropriate, to approach non-member governments with a view to their granting such of the above-mentioned facilities, privileges, immunities, and exemptions as may be desirable to facilitate the work of the Administration.

ANNEX VI

RESOLUTION OF THE GENERAL ASSEMBLY RELATING TO THE ADOPTION OF THE GENERAL CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS¹

THE GENERAL ASSEMBLY approves the annexed convention on the Privileges and Immunities of the United Nations and proposes it for accession by each Member of the United Nations.

CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

WHEREAS Article 104 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes and

WHEREAS Article 105 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes and that representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of the functions in connection with the Organization

CONSEQUENTLY the General Assembly by a resolution adopted on approved the following convention and proposes it for accession by each Member of the United Nations.

ARTICLE I. — *Juridical Personality*

SECTION 1. The United Nations shall possess juridical personality. It shall have the capacity:

- (a) to contract;
- (b) to acquire and dispose of immovable and movable property;
- (c) to institute legal proceedings.

¹ United Nations, *Journal of the General Assembly*, First Session, No. 34 (March 7, 1946), pp. 687-93. The resolution was adopted by the General Assembly on February 13, 1946.

ARTICLE II. — *Property, Funds and Assets*

SECTION 2. The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

SECTION 3. The premises of the United Nations shall be inviolable. The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

SECTION 4. The archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located.

SECTION 5. Without being restricted by financial controls, regulations or moratoria of any kind,

- (a) The United Nations may hold funds, gold or currency of any kind and operate accounts in any currency;
- (b) The United Nations shall be free to transfer its funds, gold or currency from one country to another or within any country and to convert any currency held by it into any other currency.

SECTION 6. In exercising its rights under Section 5 above, the United Nations shall pay due regard to any representations made by the Government of any Member insofar as it is considered that effect can be given to such representations without detriment to the interests of the United Nations.

SECTION 7. The United Nations, its assets, income and other property shall be:

- (a) exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services;
- (b) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the United Nations for its official use. It is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country:

- (c) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

SECTION 8. While the United Nations will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

ARTICLE III. — *Facilities in respect of Communications*

SECTION 9. The United Nations shall enjoy in the territory of each Member for its official communications treatment not less favourable than that accorded by the Government of that Member to any other Government including its diplomatic mission in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communications; and press rates for information to the press and radio. No censorship shall be applied to the official correspondence and other official communications of the United Nations.

SECTION 10. The United Nations shall have the right to use codes and to despatch and receive its correspondence by courier or in bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

ARTICLE IV. — *The Representatives of Members*

SECTION 11. Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, shall, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:

- (a) immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;
- (b) inviolability for all papers and documents;
- (c) the right to use codes and to receive papers or correspondence by courier or in sealed bags;
- (d) exemption in respect of themselves and their spouses from immigration restrictions, aliens registration or national

service obligations in the state they are visiting or through which they are passing in the exercise of their functions;

- (e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
- (f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys, and also;
- (g) such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes.

SECTION 12. In order to secure for the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer the representatives of Members.

SECTION 13. Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations are present in a state for the discharge of their duties shall not be considered as periods of residence.

SECTION 14. Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the United Nations. Consequently a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

SECTION 15. The provisions of Section 11, 12 and 13 are not applicable as between a representative and the authorities of the state of which he is a national or of which he is or has been the representative.

SECTION 16. In this article the expression "representatives" shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

ARTICLE V. — *Officials*

SECTION 17. The Secretary-General will specify the categories of officials to which the provisions of this Article and Article VII shall apply. He shall submit these categories to the General Assembly. Thereafter these categories shall be communicated to the Governments of all Members. The names of the officials included in these categories shall from time to time be made known to the Governments of Members.

SECTION 18. Officials of the United Nations shall:

- (a) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
- (b) be exempt from taxation on the salaries and emoluments paid to them by the United Nations;
- (c) be immune from national service obligations;
- (d) be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;
- (e) be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;
- (f) be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys;
- (g) have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

SECTION 19. In addition to the immunities and privileges specified in Section 18, the Secretary-General and all Assistant Secretaries-General shall be accorded in respect of themselves, their spouses and minor children the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

SECTION 20. Privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Council shall have the right to waive immunity.

SECTION 21. The United Nations shall co-operate at all times with

the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations, and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.

ARTICLE VI. — *Experts on Missions for the United Nations*

SECTION 22. Experts (other than officials coming within the scope of Article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular they shall be accorded:

- (a) immunity from personal arrest or detention and from seizure of their personal baggage;
- (b) in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;
- (c) inviolability for all papers and documents;
- (d) for the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;
- (e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
- (f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

SECTION 23. Privileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations.

ARTICLE VII. — *United Nations Laissez-Passer*

SECTION 24. The United Nations may issue United Nations laissez-passer to its officials. These laissez-passer shall be recognized and accepted as valid travel documents, by the authorities of Members, taking into account the provisions of Section 25.

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SECTION 25. Applications for visas (where required) from the holders of United Nations laissez-passer, when accompanied by a certificate that they are travelling on the business of the United Nations, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

SECTION 26. Similar facilities to those specified in Section 25 shall be accorded to experts and other persons who, though not the holders of United Nations laissez-passer, have a certificate that they are travelling on the business of the United Nations.

SECTION 27. The Secretary-General, Assistant Secretaries-General and Directors travelling on United Nations laissez-passer on the business of the United Nations shall be granted the same facilities as are accorded to diplomatic envoys.

SECTION 28. The provisions of this article may be applied to the comparable officials of specialized agencies if the agreements for relationship made under Article 63 of the Charter so provide.

ARTICLE VIII. — *Settlement of Disputes*

SECTION 29. The United Nations shall make provisions for appropriate modes of settlement of:

- (a) disputes arising out of contracts or other disputes of a private law character, to which the United Nations is a party;
- (b) disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General.

SECTION 30. All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties.

FINAL ARTICLE

SECTION 31. This convention is submitted to every Member of the United Nations for accession.

SECTION 32. Accession shall be effected by deposit of an instrument with the Secretary-General of the United Nations and the

convention shall come into force as regards each Member on the date of deposit of each instrument of accession.

SECTION 33. The Secretary-General shall inform all Members of the United Nations of the deposit of each accession.

SECTION 34. It is understood that, when an instrument of accession is deposited on behalf of any Member, the Member will be in a position under its own law to give effect to the terms of this convention.

SECTION 35. This convention shall continue in force as between the United Nations and every Member which has deposited an instrument of accession for so long as that Member remains a Member of the United Nations, or until a revised general convention has been approved by the General Assembly and that Member has become a party to this revised convention.

SECTION 36. The Secretary-General may conclude with any Member or Members supplementary agreements adjusting the provisions of this convention so far as that Member or those Members are concerned. These supplementary agreements shall in each case be subject to the approval of the General Assembly.

ANNEX VII

RESOLUTION OF THE GENERAL ASSEMBLY RELATING TO NEGOTIATIONS WITH THE COMPETENT AUTHORITIES OF THE UNITED STATES OF AMERICA¹

1. The General Assembly authorizes the Secretary-General (with the assistance of a committee composed of persons appointed by the governments of Australia, Belgium, Bolivia, China, Cuba, Egypt, France, Poland, United Kingdom, Union of Soviet Socialist Republics) to negotiate with the competent authorities of the United States of America the arrangements required as a result of the establishment of the seat of the United Nations in the United States of America.

2. The following draft convention is transmitted by the General Assembly to the Secretary-General for use in these negotiations as a basis of discussion.

3. The Secretary-General shall report to the General Assembly the results of these negotiations.

4. Any agreement apart from purely temporary agreements with the competent authorities of the United States resulting from these negotiations shall be subject to approval by the General Assembly before being signed on behalf of the United Nations.

CONVENTION BETWEEN THE UNITED NATIONS AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA

(This draft has been prepared on the assumption that there will be no private persons living within the zone containing the seat of the United Nations.)

THE UNITED NATIONS AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Desiring to conclude a convention for the purpose of carrying out the resolution adopted by the General Assembly, to establish the seat of the United Nations in and to regulate questions arising as a result thereof:

¹ United Nations, *Journal of the General Assembly*, First Session, No. 34 (March 7, 1946), pp. 693-704. The resolution was adopted by the General Assembly on February 13, 1946.

Have appointed as their plenipotentiaries for this purpose:

The United Nations.

Secretary-General

The Government of the
United States of America

who have agreed as follows:

ARTICLE I. — *Definitions*

SECTION 1. In this convention:

(a) the expression "zone" means the area referred to in Section 2 including any additions to it;

(b) the expression "law of the United States of America" includes federal, state, and local laws, however designated;

(c) the expression "Government of the United States of America" includes a state or a competent state authority wherever the context so requires;

(d) the expression "courts of the United States of America" includes federal and state courts;

(e) the expression "United Nations" means the International Organization established by the Charter of the United Nations.

ARTICLE II. — *The United Nations Zone*

SECTION 2. The seat of the United Nations shall be the area situated.....and marked pink on the map which forms Annex 1. Additions may be made later to this area in accordance with the provisions of Section 8.

SECTION 3. The Government of the United States of America undertakes, on the entry into force of this convention, to cause to be vested in the United Nations possession immediately and full ownership as soon as possible of all land in the zone as shown in Annex 1 and of all buildings situated thereon at the time of transfer.

SECTION 4. The Government of the United States of America shall be responsible for expropriating and compensating so far as necessary and as soon as possible all interests in land and buildings conveyed to the United Nations.

SECTION 5. Having regard to Section 4, the United Nations shall pay to the United States of America a fair price for any land and buildings conveyed to the United Nations. The amount so payable shall be credited to the United States of America in the accounts of the United Nations and shall be set off, during such period as may be

fixed, against contributions due from the United States of America. In default of agreement, this price and this period shall be determined by an expert selected by the President of the International Court of Justice.

SECTION 6. The United Nations shall have exclusive rights over the subsoil of land conveyed to it, and in particular the right to make constructions underground and to obtain therefrom supplies of water. It shall not, however, have the right to exploit minerals.

SECTION 7. The United Nations may establish in the zone any type of installation which it deems necessary for the purpose of its work, and in particular may establish its own radiotelegraph sending and receiving stations, including broadcasting, teletype, and telephoto services. The United Nations shall make arrangements with the International Telecommunications Union with regard to wavelengths and other similar matters.

SECTION 8. The Government of the United States of America shall, at the request of the Secretary-General acting in pursuance of a resolution of the General Assembly, cause to be vested in the United Nations possession immediately and full ownership as soon as possible over such further land as may be required for the purpose of constructing an airport, railway station, or radiotelegraphic station or for such other purposes as may be required by the United Nations. The provisions of Sections 4, 5 and 6 shall apply to land so conveyed.

SECTION 9. In the event of the land conveyed in accordance with Section 8 not being contiguous to the remainder of the zone, the Government of the United States of America shall guarantee unimpeded communication and transit between parts of the zone.

ARTICLE III. — *Law and Authority in the Zone*

SECTION 10. The zone, including the air space above it and the subsoil below it, shall be inviolable.

SECTION 11. Save as otherwise provided in this convention, the zone shall be under the control and authority of the United Nations.

SECTION 12. Without prejudice to the generality of Section 11, the Government of the United States of America renounces jurisdiction over any matters relating to entry into the zone and to the conditions under which persons may remain or reside there, and over any matters relating to the construction or removal of buildings in the zone.

SECTION 13. Officers or officials of any authority in the territory of the United States of America, whether administrative, judicial,

military, or police, shall not enter the zone to perform any official duties therein except with the permission of and under conditions agreed by the Secretary-General. The service of legal process, including the seizure of private property, shall take place within the zone under conditions approved by the Secretary-General.

SECTION 14. Without prejudice to the provisions which are contained in Annex II and subsequently in the General Convention referred to in Section 32, and which relate to the immunities of officials of the United Nations and of the representatives of Members, the United Nations shall not permit the zone to become a refuge either for persons who are avoiding arrest under the law of the United States of America or are required by the Government of the United States of America for extradition to another country, or for persons who are endeavouring to avoid service of legal process.

SECTION 15. Subject to Section 16, the law of the United States of America shall apply within the zone, and in particular the ordinary civil and criminal law.

SECTION 16. The United Nations may enact regulations making provision of an administrative character for the zone. Any such regulation shall prevail over any provisions in the law of the United States of America which are inconsistent with it. It is agreed that within the zone the protection afforded by the Constitution of the United States to personal liberty and to the basic human freedoms of expression and worship shall not be lessened, and no form of racial discrimination shall be permitted.

SECTION 17. The courts of the United States of America shall, without prejudice to any provisions of Annex II and subsequently of the General Convention referred to in Section 32, have jurisdiction over acts done and transactions taking place in the zone, in the same manner as they have over similar acts and transactions taking place outside the zone.

SECTION 18. The courts of the United States of America, when dealing with cases arising out of or relating to acts done or transactions taking place in the zone, shall take cognizance of the regulations enacted by the United Nations under Section 16, though they shall not be obliged to inflict penalties for infraction of such regulations unless the Government of the United States of America has agreed to these regulations before the infraction was committed.

ARTICLE IV. — *Communications and Transit to and from the Zone*

SECTION 19. The Government of the United States of America shall guarantee at all times adequate means of communication to and

from the zone through the territory of the United States of America, for the passage of persons, the transmission of postal correspondence and telegrams, and the transport of goods required for use and consumption in the zone.

SECTION 20. Representatives of Members, irrespective of the relations existing between their Government and the Government of the United States of America, officials both of the United Nations and of the specialized agencies, and the families of these representatives and officials, shall at all times enjoy the right of unimpeded and safe transit through the territory of the United States of America to and from the zone.

SECTION 21. The accredited representatives of news agencies, whether press, radio, or films, and of non-governmental organizations recognized by the United Nations for the purpose of consultation, shall also enjoy the rights referred to in Section 20.

SECTION 22. Immigration and other regulations in force in the United States of America, regarding the entry and residence of foreigners, shall not be applied in such a manner as to interfere with the rights referred to in Sections 20 and 21. Visas required by the persons referred to in those Sections shall be granted without charge, without delay, and without requirement of personal attendance for the issue of the visa.

SECTION 23. The Government of the United States of America shall give or cause to be given facilities for the issue of visas to, and for the use of the available means of transport by, persons coming from abroad (other than those referred to in Sections 20 and 21) who desire to visit the zone. The Secretary-General of the United Nations and the Government of the United States of America shall, at the request of either of them, enter into discussion with regard to the application of this Section.

SECTION 24. The provisions of this Article shall not prevent the Government of the United States of America from taking precautions in the interests of national security, provided that such precautions shall not have the effect of interfering with the rights referred to in Sections 19, 20 and 21.

ARTICLE V. — *Resident Representatives to the United Nations*

SECTION 25. Persons accredited to the United Nations by Members as resident representatives and their staffs, whether residing inside or outside the zone, shall be recognized by the Government of the United States of America as entitled on its territory to the same privileges and immunities as that Government accords to the diplomatic envoys accredited to it, and the staffs of these envoys.

ARTICLE VI. — *Police Protection of the Zone*

SECTION 26. The Government of the United States of America shall cause to be provided on the boundaries of the zone such police protection for the zone as is required, and shall be responsible for ensuring that the tranquillity of the zone is not disturbed by the unauthorized entry of bodies of persons from outside or by disturbances in its immediate vicinity.

SECTION 27. If so requested by the Secretary-General, the Government of the United States of America shall cause to be provided a sufficient number of police to perform duties inside the zone for the preservation of law and order therein, and for the removal of persons who have committed or are suspected of having committed or of being about to commit offences, including infractions to the administrative regulations of the United Nations.

ARTICLE VII. — *Public Services for and the Amenities of the Zone*

SECTION 28. The Government of the United States of America will exercise all the powers which it possesses to ensure that the zone shall be supplied on equitable terms with the necessary public services (including electricity, water, gas, post, telephone, telegraph, drainage, collection of refuse) and that these services shall not be interrupted. In case of any interruption or threatened interruption of any of these services, the Government of the United States of America will consider the needs of the zone as being of equal importance with the essential services of the United States Government itself. Consequently in that event it will take all those steps which it would take in case of interruption or threatened interruption of these services to the essential Departments of the United States Government to ensure that the work of the United Nations is not prejudiced.

SECTION 29. The Government of the United States of America shall be responsible for ensuring that the amenities of the zone are not prejudiced and the purposes for which the zone is required are not obstructed by any use made of the land in its vicinity.

ARTICLE VIII. — *Matters relating to the Operation of This Convention*

SECTION 30. The Secretary-General and the Government of the United States of America shall settle by agreement the channel or channels through which shall be conducted correspondence relating to the application of the provisions of this convention and to other questions affecting the zone. If the Secretary-General so requests, the Government of the United States of America shall appoint a

special representative for the purpose of liaison with the Secretary-General.

SECTION 31. In so far as the fulfilment of this convention requires co-operation and action by any state or other non-federal authority of the United States of America, the Government of the United States will conclude with that state or authority such agreements as are necessary for this purpose. The conclusion of these agreements, together with the enactment of any necessary legislation by the United States and by the State, shall be completed before the notice is given which is required under Section 35 to be given by the Government of the United States of America before this convention enters into force.

ARTICLE IX. — *Relation between This Convention and the General Convention*

SECTION 32. Until the Government of the United States of America becomes a party to the General Convention relating to the Privileges and Immunities of the United Nations, the provisions of Annex II shall apply between the United Nations and the Government of the United States of America. Thereafter, those provisions shall be replaced by the provisions of the General Convention, which shall continue in force so long as the present convention remains in operation.

SECTION 33. The provisions of this convention shall be complementary to the provisions of the General Convention and, until the Government of the United States of America becomes a party to the General Convention, to the provisions of Annex II.

SECTION 34. In so far as any provision of this convention and any provision of the General Convention (or of Annex II as the case may be) relate to the same subject matter, the two provisions shall wherever possible be treated as complementary, so that both provisions shall be applicable and neither shall narrow the effect of the other; but in any case of absolute conflict, the provisions of this convention shall prevail.

ARTICLE X. — *Final Provisions*

SECTION 35. This convention, having already been approved by a Resolution of the General Assembly, shall enter into force as soon as the Government of the United States of America notifies the Secretary-General that it has all the powers necessary to fulfil the provisions of the convention. The Government of the United States of America shall take every possible step to enable it to give

this notification as soon as possible, and in any case not later than.

SECTION 36. This convention shall remain in force so long as the seat of the United Nations is maintained in the territory of the United States of America.

SECTION 37. The seat of the United Nations shall only be removed from the territory of the United States of America if the United Nations should so decide.

SECTION 38. If the seat of the United Nations is removed from the territory of the United States of America, the Government of the United States of America shall pay to the United Nations an equitable sum for the land in the zone and for all buildings and installations thereon. An expert nominated by the President of the International Court of Justice shall decide, in default of agreement between the parties, what sum is equitable, having regard to (a) the then value to the United States of America of the land, buildings and installations; and (b) the cost incurred by the United Nations in acquiring the land and in erecting the buildings and installations.

SECTION 39. Any difference between the United Nations and the Government of the United States of America concerning the interpretation or application of this convention or of any supplementary agreement or agreement which is not settled by negotiation shall be referred to the arbitration of an umpire appointed for the purpose by the President of the International Court of Justice.

SECTION 40. Either party may ask the General Assembly to request of the International Court of Justice an advisory opinion on any legal question arising in the course of the proceedings referred to in Section 39. Pending the receipt of the opinion of the Court, an interim decision of the umpire shall be observed by both parties. Thereafter the umpire shall render a final decision, having regard to the opinion of the Court.

ANNEX I

MAP

(Not reproduced here)

ANNEX II

ARTICLE I. — *Juridical Personality*

SECTION 1. The United Nations shall possess juridical personality. It shall have the capacity:

- (a) to contract;
- (b) to acquire and dispose of immovable and movable property;
- (c) to institute legal proceedings.

ARTICLE II. — *Property, Funds and Assets*

SECTION 2. The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as, in any particular case, it has expressly waived immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

SECTION 3. The premises of the United Nations shall be inviolable. The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation, and any other form of interference, whether by executive, administrative, judicial or legislative action.

SECTION 4. The archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located.

SECTION 5. Without being restricted by financial controls, regulations or moratoria of any kind

- (a) the United Nations may hold funds, gold or currency, of any kind and operate accounts in any currency;
- (b) the United Nations shall be free to transfer its funds, gold or currency, between the United States of America and any other state, and from one place to another within the United States of America, and to convert any currency held by it into any other currency.

SECTION 6. In exercising its rights under Section 5 above the United Nations shall pay due regard to any representations made by the Government of the United States, in so far as it is considered that effect can be given to such representations without detriment to the interests of the United Nations.

SECTION 7. The United Nations, its assets, income and other property shall be:

- (a) exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes

which are, in fact, no more than charges for public utility services;

- (b) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the United Nations for its official use. It is understood, however, that articles imported under such exemption will not be sold in the United States of America except under conditions agreed with the Government of the United States of America;
- (c) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

SECTION 8. While the United Nations will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless, when the United Nations is making important purchases for official use of property on which such duties or taxes have been charged or are chargeable, the Government of the United States of America will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

ARTICLE III. — *Facilities in respect of Communications*

SECTION 9. The United Nations shall enjoy in the territory of the United States of America for its official communications treatment not less favourable than that accorded by the Government of the United States of America to any other Government including its diplomatic mission in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communications, and press rates for information to the press and radio. No censorship shall be applied to the official correspondence and other official communications of the United Nations.

SECTION 10. The United Nations shall have the right to use codes and to despatch and receive its correspondence by courier or in bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

ARTICLE IV. — *The Representatives of Members*

SECTION 11. Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, shall, while exercising their functions and during their journey to and from the place of meeting, be accorded by the Government of the United States of America the following privileges and immunities:

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- (a) immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;
- (b) inviolability for all papers and documents;
- (c) the right to use codes and to receive papers or correspondence by courier or in sealed bags.
- (d) exemption in respect of themselves and their spouses from immigration restrictions, aliens registration or national service obligations in the state they are visiting or through which they are passing in the exercise of their functions;
- (e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions to the Government of the United States;
- (f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys; and also
- (g) such other privileges, immunities and facilities, not inconsistent with the foregoing, as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes.

SECTION 12. In order to secure for the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer the representatives of Members.

SECTION 13. Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations are present in the United States of America for the discharge of their duties shall not be considered as periods of residence.

SECTION 14. Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves but in order to safeguard the independent exercise of their functions in connection with the United Nations. Consequently a Member not only has the right but is under a duty to waive the

immunity of its representative in any case where the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

SECTION 15. The provision of Sections 11, 12 and 13 may not be invoked against the authorities of the United States of America:

- (a) by a national of the United States of America
- (b) by a representative of the United States of America
- (c) by a representative of another Member, when that Member has waived the immunity in question.

SECTION 16. In this article the expression "representatives" shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

ARTICLE V. — *Officials*

SECTION 17. The Secretary-General will specify the categories of officials to which the provisions of this Article and Article VII shall apply. He shall submit these categories to the General Assembly. Thereafter these categories shall be communicated to the Governments of all Members. The names of the officials included in these categories shall from time to time be made known to the Government of the United States of America.

SECTION 18. Officials of the United Nations shall:

- (a) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
- (b) be exempt from taxation on the salaries and emoluments paid to them by the United Nations;
- (c) be immune from national service obligations;
- (d) be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;
- (e) be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government of the United States of America;
- (f) be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys;
- (g) have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

SECTION 19. In addition to the immunities and privileges specified in Section 18, the Secretary-General and all Assistant Secretaries-General shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

SECTION 20. Privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations.

SECTION 21. The United Nations shall co-operate at all times with the appropriate authorities of the United States of America to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.

ARTICLE VI. — *Experts on Missions for the United Nations*

SECTION 22. Experts (other than officials coming within the scope of Article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular they shall be accorded:

- (a) immunity from personal arrest or detention and from seizure of their personal baggage;
- (b) in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;
- (c) inviolability for all papers and documents;
- (d) for the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;
- (e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions to the Government of the United States of America.

- (f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

SECTION 23. Privileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations.

ARTICLE VII. — *United Nations Laissez-Passer*

SECTION 24. The United Nations may issue United Nations laissez-passer to its officials. These laissez-passer shall be recognized and accepted as valid travel documents by the authorities of the United States of America, taking into account the provisions of Section 25.

SECTION 25. Applications for visas (where required) from the holders of United Nations laissez-passer, when accompanied by a certificate that they are travelling on the business of the United Nations, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

SECTION 26. Similar facilities to those specified in Section 25 shall be accorded to experts and other persons who, though not the holders of United Nations laissez-passer, have a certificate that they are travelling on the business of the United Nations.

SECTION 27. The Secretary-General, Assistant Secretary-General and Directors travelling on United Nations laissez-passer on the business of the United Nations shall be granted the same facilities as are accorded to diplomatic envoys.

SECTION 28. The provisions of this Article may be applied to the comparable officials of specialized agencies if the agreements for relationship made under Article 63 of the Charter provide for it.

ARTICLE VIII. — *Settlement of Disputes*

SECTION 29. The United Nations shall make provision for appropriate modes of settlement of:

- (a) disputes arising out of contracts or other disputes of a private law character, to which the United Nations is a party;
- (b) disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General.

ANNEX VIII

RESOLUTION OF THE GENERAL ASSEMBLY ON THE PRIVILEGES AND IMMUNITIES OF THE INTERNATIONAL COURT OF JUSTICE¹

1. THE GENERAL ASSEMBLY, with a view to ensuring that the International Court of Justice shall enjoy the privileges, immunities and facilities necessary for the exercise of its functions and the fulfilment of its purposes, in the country of its seat and elsewhere, invites the members of the Court at their first Session to consider this question and to inform the Secretary-General of their recommendations.

2. THE GENERAL ASSEMBLY decides that the question of the privileges and immunities of the Court shall be considered as soon as possible after the receipt of the recommendations of the Court.

3. THE GENERAL ASSEMBLY recommends that, until further action has been taken, the rules which have been applied to the Permanent Court of International Justice should be observed by Members in relation to the International Court of Justice.

¹ United Nations, *Journal of the General Assembly*, First Session, No. 34 (March 7, 1946), p. 704. The resolution was adopted by the General Assembly on February 13, 1946.

ANNEX IX

RESOLUTION OF THE GENERAL ASSEMBLY ON THE COORDINATION OF THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS AND THE SPECIALIZED AGENCIES¹

THE GENERAL ASSEMBLY considers that there are many advantages in the unification as far as possible of the privileges and immunities enjoyed by the United Nations and the various specialized agencies.

While recognizing that not all specialized agencies require all the privileges and immunities which may be needed by others, and that certain of these may, by reason of their particular functions, require privileges of a special nature which are not required by the United Nations itself, the General Assembly considers that the privileges and immunities of the United Nations should be regarded, as a general rule, as a maximum within which the various specialized agencies should enjoy such privileges and immunities as the appropriate fulfilment of their respective functions may require, and that no privileges and immunities which are not really necessary should be asked for.

THEREFORE THE GENERAL ASSEMBLY instructs the Secretary-General to open negotiations with a view to the re-consideration in the light both of the General Convention adopted by the United Nations and of the considerations above, of the provisions under which the specialized agencies at present enjoy privileges and immunities.

¹ United Nations, *Journal of the General Assembly*, First Session, No. 34 (March 7, 1946), pp. 704-5. The resolution was adopted by the General Assembly on February 13, 1946.

ANNEX X

AGREEMENT OF MARCH 11, 1946, BETWEEN THE SWISS FEDERAL COUNCIL AND THE INTERNATIONAL LABOUR ORGANISATION CONCERNING THE LEGAL STATUS OF THE INTERNATIONAL LABOUR ORGANISATION IN SWITZERLAND, AND ARRANGEMENT FOR THE EXECUTION OF THE AGREEMENT¹

A. AGREEMENT

The Swiss Federal Council, of the one part, and the International Labour Organisation, of the other part, wishing to conclude an agreement to regulate the legal status of the International Labour Organisation in Switzerland after the dissolution of the League of Nations have agreed on the following provisions:

ARTICLE 1. The Swiss Federal Council guarantees to the International Labour Organisation the independence and freedom of action belonging to it as an international institution.

ARTICLE 2. The Swiss Federal Council recognises the international personality and legal capacity in Switzerland of the International Labour Organisation.

ARTICLE 3. The International Labour Organisation enjoys the immunities known in international law as diplomatic immunities.

ARTICLE 4. The Swiss Federal Council recognises the extritoriality of the grounds and buildings of the International Labour Organisation and of all buildings occupied by it in connection with meetings of the International Labour Conference or any other meeting convened in Switzerland by the International Labour Organisation.

ARTICLE 5. The Swiss Federal Council recognises that the International Labour Organisation and its Members in their relations with the Organisation enjoy absolute freedom of meeting including freedom of discussion and decision.

ARTICLE 6. — 1. The International Labour Organisation, its properties and assets wherever they may be or by whomsoever they may be held shall enjoy immunity from every form of legal process except in so far as this immunity is formally waived by the Director of the International Labour Office or his duly authorised representative.

2. The property and assets of the International Labour Organisation

¹ The texts that follow are translations made by the International Labor Office. Only the original French text is authentic.

tion wherever they may be and by whomsoever they may be held shall enjoy immunity from any measure of perquisition, requisition, confiscation, expropriation or any other form of seizure or interference by any public authority whatsoever its nature.

ARTICLE 7. The grounds and buildings of the International Labour Organisation are inviolable. No agent of the Swiss public authority may enter them without the express consent of the International Labour Organisation.

ARTICLE 8. The archives of the International Labour Organisation and all documents belonging to it or in its possession are inviolable.

ARTICLE 9. The export and import of the publications of the International Labour Organisation shall not be subject to any restrictive measures.

ARTICLE 10. The International Labour Organisation is exonerated from direct and indirect taxes, federal, cantonal and communal on buildings of which it is the owner and which are occupied by its services as well as on its movable property, it being understood that the International Labour Organisation does not claim exemption from charges corresponding to a service rendered by a public authority.

ARTICLE 11. — 1. The International Labour Organisation may receive and hold funds, notes, coins and securities of any kind and may dispose of them freely both within Switzerland and in its relations with other countries.

2. The present Article also applies to States Members of the International Labour Organisation in their relations with the Organisation.

ARTICLE 12. The International Labour Organisation shall enjoy for its official communications treatment not less favorable than that accorded to diplomatic missions in Switzerland in respect of:

- (a) all priorities for communications and transport;
- (b) postal, telegraphic, radio-telegraphic, telephonic, radio-telephonic and telephotographic tariffs, etc.

ARTICLE 13. No censorship shall be applied to the duly authenticated official communications of the International Labour Organisation whatever the means of communication employed.

ARTICLE 14. — 1. The Swiss authorities shall take the necessary measures to facilitate the entry into, sojourn in, and departure from Swiss territory of all persons having official business with the International Labour Organisation, that is to say:

- (a) representatives of Members States whatever may be the relations between Switzerland and the said States;

- (b) members of the Governing Body of the International Labour Office, irrespective of nationality;
- (c) agents and officials of the International Labour Organisation;
- (d) other persons irrespective of nationality summoned by the International Labour Organisation.

2. Any police regulations tending to restrict the entry of foreigners into Switzerland or to regulate the conditions of their sojourn shall not apply to the persons covered by the present Article.

ARTICLE 15. The representatives of the Members of the International Labour Organisation and members of the Governing Body who are in Switzerland on official business shall enjoy the following privileges and immunities;

- (a) inviolability of the person, place of residence and all objects belonging to the person concerned;
- (b) immunity from jurisdiction;
- (c) fiscal immunity corresponding to that accorded to diplomatic agents in accordance with international usage as accepted in Switzerland;
- (d) customs facilities corresponding to those accorded to diplomatic agents in accordance with international usage as accepted in Switzerland;
- (e) the right to use cyphers in their official communications and to reserve and send documents and correspondence by courier or duly sealed diplomatic bags;
- (f) exemption from exchange restrictions under conditions identical to those accorded to diplomatic agents of foreign Governments on temporary mission.

ARTICLE 16. The Director of the International Labour Office and officials of the categories designated by him and agreed to by the Swiss Federal Council shall enjoy the privileges, immunities, exemptions and facilities granted to diplomatic agents in accordance with international law and custom.

ARTICLE 17. All officials of the International Labour Office, irrespective of nationality, shall enjoy the following immunities and facilities:

- (a) exemption from jurisdiction for all acts performed in the discharge of their duties;
- (b) exoneration from all federal, cantonal and communal taxes on salaries, emoluments and indemnities paid to them by the International Labour Organisation.

ARTICLE 18. Officials of the International Labour Office who are

not of Swiss nationality shall enjoy the immunities, exemptions and facilities enumerated in the Arrangement for the execution of the present Agreement.

ARTICLE 19. Any pensions fund or provident fund conducted under the authority of the International Labour Organisation shall enjoy legal capacity in Switzerland, if it so requests, and shall enjoy the same exemptions, immunities and privileges as the Organisation itself.

ARTICLE 20. In so far as they are not modified by the present Agreement the *Modus Vivendi* of 1921 and 1926 and the supplementary arrangements concluded between the Federal Political Department, the League of Nations and the International Labour Office shall continue to apply to the International Labour Organisation.

ARTICLE 21. — 1. The immunities provided for in the present Agreement in respect of officials of the International Labour Organisation are not designed for the personal benefit of those officials but are designed solely to ensure the free functioning of the International Labour Organisation and the complete independence of its agents in all circumstances.

2. The Director of the International Labour Office has the right and duty to waive the immunity of any official in any case in which he considers that immunity would impede the course of justice and can be waived without prejudice to the interests of the International Labour Organisation.

ARTICLE 22. The International Labour Organisation shall cooperate at all times with the Swiss authorities to facilitate the proper administration of justice, secure the observance of police regulations and prevent any abuse in connection with the privileges, immunities and facilities provided for in this Agreement.

ARTICLE 23. The International Labour Organisation shall make provision for appropriate methods of settlement of:

- (a) disputes arising out of contracts and other disputes of a private law character to which the International Labour Organisation is a party;
- (b) disputes involving an official of the International Labour Office who by reason of his official position enjoys immunity, if such immunity has not been waived by the Director.

ARTICLE 24. Switzerland shall not incur by reason of the activity of the International Labour Organisation on its territory any international responsibility for acts or omissions of the Organisation or of its agents acting or abstaining from acting within the limits of their functions.

ARTICLE 25. — 1. Nothing in the present Agreement shall affect the right of the Swiss Federal Council to take the precautions necessary for the security of Switzerland.

2. If it considers it necessary to apply the first paragraph of this Article the Swiss Federal Council shall approach the International Labour Organisation as rapidly as circumstances allow in order to determine by mutual agreement the measures necessary to protect the interests of the International Labour Organisation.

3. The International Labour Organisation shall collaborate with the Swiss authorities to avoid any prejudice to the security of Switzerland resulting from its activity.

ARTICLE 26. The Federal Political Department is entrusted with the execution by the Swiss Confederation of this Agreement and the Arrangement for its Execution.

ARTICLE 27. — 1. Any divergence of opinion concerning the application or interpretation of this Agreement or the Arrangement for its Execution which has not been settled by direct conversations between the parties may be submitted by either party to a tribunal of three members which shall be established on the coming into force of this Agreement.

2. The Swiss Federal Council and the International Labour Organisation shall each choose one member of the tribunal.

3. The judges so appointed shall choose their president.

4. In the event of disagreement between the judges on the choice of a president, the president shall be chosen by the President of the Supreme Court of the Netherlands at the request of the Members of the tribunal.

5. The tribunal may be seised of an application by either party.

6. The tribunal shall determine its own procedure.

ARTICLE 28. — 1. This Agreement shall come into force as soon as it has been approved by the Swiss Federal Council and the Governing Body of the International Labour Office.

2. It shall become operative on the dissolution of the League of Nations.

ARTICLE 29. Until the date of the dissolution of the League of Nations the Modus Vivendi of 1921 and 1926 and the supplementary arrangements concluded between the Political Department, the League of Nations and the International Labour Office shall remain applicable to the International Labour Organisation.

ARTICLE 30. — 1. This Agreement may be revised at the request of either party.

2. In this event the two parties shall consult each other concerning the modifications to be made in its provisions.

3. If the negotiations do not result in an understanding within one year the Agreement may be denounced by either party giving two years' notice.

ARTICLE 31. The provisions of this Agreement are completed by the Arrangement for its Execution.

B. ARRANGEMENT FOR THE EXECUTION OF THE AGREEMENT

ARTICLE 1. The International Labour Organisation enjoys complete exemption from customs, statistical and similar duties on all goods for its official use imported or exported by it, it being understood that objects imported in franchise may only be sold in Switzerland under conditions fixed by agreement between the International Labour Organisation and the Swiss Federal Council.

ARTICLE 2. The Swiss Federal Council recognises so far as it is concerned that the provisions and restrictions on the import and export of goods are not applicable to objects for the official use of the International Labour Organisation and necessary for its work, subject to the provisions of general international conventions and measures of a sanitary character, it being understood that it is for the International Labour Organisation to obtain any consent from other States which may be necessary to make this exemption effective.

ARTICLE 3. The International Labour Organisation is exempt from all compulsory contributions to general social insurance funds such as equalisation, unemployment insurance and workmen's compensation funds, etc., it being understood that the International Labour Organisation will so far as possible and under conditions to be agreed upon insure with Swiss social insurance funds those of its agents who are not assured of equivalent social protection by the International Labour Organisation itself.

ARTICLE 4. — 1. The International Labour Organisation may hold accounts in all currencies.

2. The International Labour Organisation may transfer abroad freely funds, notes, specie and securities.

3. The International Labour Organisation may convert into other currencies all moneys held by it.

4. The Swiss Federal Council will have regard to the provisions of the preceding paragraphs of this article in its negotiations with foreign governments concerning the transfer of funds and goods.

ARTICLE 5. — 1. The International Labour Organisation may use cyphers in its communications.

2. The International Labour Organisation is entitled to use cou-

riers and diplomatic bags under the same conditions as foreign governments.

ARTICLE 6. The International Labour Organisation shall enjoy the preferential tariffs applicable to press communications in accordance with the International Telecommunications Convention for its communications addressed directly or through an intermediary to the press and radio.

ARTICLE 7. — 1. For the purpose of facilitating the entry into Switzerland of the persons enumerated in Article 14 of the Agreement Swiss legations and consulates abroad shall be given general instructions in advance to grant visas on production of a passport or any equivalent identity and travel document and of a document sufficient to establish the official relationship of the applicant to the International Labour Organisation.

2. Swiss legations and consulates will be given instructions to grant visas without any delay or waiting period and without requiring the personal attendance of the applicant or the payment of charges.

3. The provisions of Article 14 of the Agreement and of this article shall apply in the same conditions to the wife and children of the person concerned if they live with him and do not exercise a profession.

ARTICLE 8. The Federal Political Department shall furnish the International Labour Office for each official with an identity card bearing the photograph of the holder. This card, authenticated by the Federal Political Department and the International Labour Office, shall serve to identify the official in relation to all federal, cantonal and communal authorities.

ARTICLE 9. Officials of the International Labour Office who are not of Swiss nationality shall enjoy the following exemptions and facilities.

- (a) exemption from all customs, statistical and import duties on all objects whether used or new brought by the official on his first installation in Switzerland or on his return to Switzerland after a minimum absence of three years;
- (b) exemption from exchange restrictions under conditions identical with those accorded to diplomatic agents accredited to the Federal Council;
- (c) in the event of international crisis, repatriation facilities for the officials and members of their family identical with those accorded to the members of diplomatic missions accredited to the Federal Council;
- (d) exoneration from federal, cantonal and communal taxes in

- accordance with the usages established for the non-Swiss personnel of the international institutions at Geneva;
- (e) exemption on application by the Director of the International Labour Office from customs duties on imported motor-cars, it being understood that this facility may not be used more often than once in three years as a maximum and that the customs duties will be due in the event of the sale or disposal of the motor-car to a person not entitled to this exemption before the expiry of an interval to be determined by common agreement between the Swiss Federal Council and the International Labour Office;
 - (f) the customs examination of luggage will as in the case of the diplomatic corps be limited to the strict minimum.

ARTICLE 10. — 1. The Director of the International Labour Office will communicate to the Swiss Federal Council a list of the officials of Swiss nationality who are subject to military obligations.

2. The Director of the International Labour Office and the Swiss Federal Council will draw up by common agreement a restricted list of officials of Swiss nationality who on account of their functions will be accorded dispensations from military service.

3. In the event of the mobilisation of other Swiss officials the International Labour Office may request through the Federal Political Department a postponement of call up or any other appropriate measures.

ARTICLE 11. Officials of Swiss nationality of the categories fixed by common agreement between the Director of the International Labour Office and the Swiss Federal Council who travel on official mission or reside abroad on account of their functions shall be entitled to a diplomatic passport issued by the Federal Political Department.

ARTICLE 12. — 1. Capital sums due by the Pensions Fund or any other provident fund to the agents, officials or employees of the International Labour Organisation in any circumstances, including the termination, interruption or suspension of their services, shall be exempt at the time of payment from all Swiss taxes on capital and income.

2. The same principle shall apply to all indemnities for sickness, accidents, etc. paid to agents, officials or employees of the International Labour Organisation.

ARTICLE 13. — 1. The Swiss Federal authorities shall issue special stamps for the use of the International Labour Organisation within the limits allowed by the Universal Postal Convention.

2. The existing arrangements on this subject shall remain in force unless they are modified by mutual agreement.

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ARTICLE 14. — 1. The present Arrangement shall come into force as soon as it has been approved by the Swiss Federal Council and the Governing Body of the International Labour Office.

2. It will become operative on the dissolution of the League of Nations.

ARTICLE 15. — 1. This Arrangement may be revised at the request of either party.

2. In this event the two parties shall consult each other concerning the modifications to be made in the provisions of the Arrangement.

3. If the negotiations do not result in an understanding within one year, the Arrangement may be denounced by either party giving two years' notice.

C. STATEMENT BY THE REPRESENTATIVES OF THE FEDERAL POLITICAL DEPARTMENT AND THE FEDERAL DEPARTMENT OF PUBLIC ECONOMY

At the time of signing the procès-verbal, the representatives of the Federal Political Department and of the Federal Department of Public Economy declare:

(1) that they are proposing to the Federal Council that it should request the Swiss National Bank to give the International Labour Organisation every assistance in the event of it finding it difficult to obtain the Swiss francs necessary for it to carry on its activities in Switzerland.

(2) that the Federal Council accepts as soon as circumstances permit to substitute in paragraph 4 of Article 27 of the Agreement for the words "the President of the Supreme Court of the Netherlands" the words "the President of the International Court of Justice."

(signed) PAUL GUGGENHEIM
D. SECRETAN
KAUFMANN

ANNEX XI

INTERIM ARRANGEMENT ON PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS IN SWITZERLAND, APPROVED BY A NEGOTIATING COMMITTEE APPOINTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS AND BY REPRESENTATIVES OF THE SWISS FEDERAL COUNCIL, APRIL 19, 1946¹

A. TEXT OF INTERIM ARRANGEMENT

Whereas the General Assembly of the United Nations on 12 February, 1946, approved a Common Plan for the transfer of certain assets of the League of Nations to the United Nations which had been previously agreed upon between a Committee set up by the Preparatory Commission of the United Nations and the Supervisory Commission of the League of Nations; and

Whereas the Assembly of the League of Nations approved the said Common Plan on 18 April, 1946,

The Swiss Federal Council on the one hand and the Secretary-General of the United Nations on the other hand have agreed to the following Interim Arrangement for the purpose of determining the privileges and immunities to be granted to the United Nations, to the representatives of its Members and to its officials, and of regulating other related matters.

ARTICLE I. — *Juridical Personality*

SECTION 1. The Swiss Federal Council recognizes the international personality and legal capacity of the United Nations. Consequently, according to the rules of international law, the Organization cannot be sued before the Swiss Courts without its express consent.

ARTICLE II. — *Property, Funds and Assets*

SECTION 2. The premises of the United Nations shall be inviolable. The property and assets of the United Nations in Switzerland shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

SECTION 3. The archives of the United Nations, and in general all documents belonging to it or held by it in Switzerland, shall be inviolable.

¹ United Nations, General Assembly, documents A/L.N/3, June 13, 1946; and A/175, November 4, 1946.

SECTION 4. Without being restricted by financial control, regulations or moratoria of any kind,

- (a) the United Nations may hold funds, gold or currency of any kind and operate accounts in any currency;
- (b) the United Nations shall be free to transfer its funds, gold or currency to or from Switzerland or within Switzerland and to convert any currency held by it into any other currency.

In exercising its rights under this section, the United Nations shall pay due regard to any representations made by the Swiss Federal Council insofar as the Organization considers that effect can be given to such representations without detriment to its interests.

SECTION 5. The United Nations, its assets, income and other property shall be:

- (a) exempt from all direct and indirect taxes whether federal, cantonal or communal. It is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services;
- (b) exempt from the "droit de timbre" on coupons instituted by the Swiss Federal law of 25 June, 1921, and from the "impôt anticipé" introduced by the Federal Council decree of 1 September, 1943, and supplemented by the Federal Council decree of 31 October, 1944. The exemption shall be effected by the repayment to the United Nations of the amount of tax levied on its assets;
- (c) exempt from all customs duties in respect of articles imported or exported by the United Nations for its official use. It is understood, however, that articles imported under such exemption will not be sold in Switzerland except under conditions agreed with the Swiss Federal Council;
- (d) exempt from all prohibitions and restrictions on imports and exports in respect of articles intended for the official use of the United Nations, on the understanding that the United Nations will use its good offices to obtain if necessary the consent of any other State which may be concerned, and subject to the provisions of general international conventions and public health measures;
- (e) exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of its publications.

SECTION 6. The United Nations does not propose, as a general rule, to claim exemption from indirect taxes or sales taxes included in the price of movable or immovable property. Its intention is to

claim this exemption only in the case of important purchases effected by the United Nations for its official purposes where such taxes are included in the price. In cases of this kind, the Swiss Federal Council will make appropriate administrative arrangements for the remission or return of the amount of such taxes.

ARTICLE III. — *Facilities in respect of Communications*

SECTION 7. The United Nations shall enjoy in Switzerland for its official communications treatment not less favourable than that accorded by the Swiss Federal Council to any Government including its diplomatic mission in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communications; and press rates for information to the press and radio in conformity with the International Convention on Telecommunications. No censorship shall be applied to the official correspondence and other official communications of the United Nations.

SECTION 8. The United Nations shall have the right to use codes and to despatch and receive its correspondence by courier or in bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

ARTICLE IV. — *The Representatives of Members of the United Nations*

SECTION 9. Representatives of Members of the United Nations on its principal and subsidiary organs and at conferences convened by the United Nations, shall, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities:

- (a) immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and acts done by them in their capacity as representatives, immunity from legal process of every kind;
- (b) inviolability for all papers and documents;
- (c) the right to use codes and to receive papers or correspondence by courier or in sealed bags;
- (d) exemption in respect of themselves and their spouses from immigration restrictions, aliens registration or national service obligations;
- (e) the same facilities in respect of currency or exchange regulations as are accorded to representatives of foreign governments on temporary official missions;

- (f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents;
- (g) such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic agents enjoy, except that they shall have no right to claim exemption from customs duties on articles imported (otherwise than as part of their personal baggage) or from indirect taxes or sales taxes.

SECTION 10. In order to secure for the representatives of Members of the United Nations on its principal and subsidiary organs and at conferences convened by the United Nations, complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer the representatives of Members of the United Nations.

SECTION 11. If the incidence of any form of taxation depends upon residence in Switzerland, periods during which the representatives of Members of the United Nations on its principal and subsidiary organs and at conferences convened by the United Nations are present in Switzerland for the discharge of their duties shall not be considered as periods of residence.

SECTION 12. Privileges and immunities are accorded to the representatives of Members of the United Nations not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the United Nations. Consequently, a Member of the United Nations not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of that Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

SECTION 13. In this article the expression "representatives" shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

ARTICLE V. — *Officials of the United Nations*

SECTION 14. The Secretary-General will from time to time make known to the Swiss Federal Council, in the same manner as to the Governments of Member States, the names of those officials to whom the provisions of this Article and Article VII shall apply.

SECTION 15. Officials of the United Nations shall:

- (a) be immune from legal process in respect of words spoken

- or written and acts performed by them in their official capacity;
- (b) be exempt from taxation on the salaries and emoluments paid to them by the United Nations;
 - (c) be immune from national service obligations, subject to the special provisions contained in the Annex to the present Arrangement concerning officials of Swiss nationality;
 - (d) be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;
 - (e) be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Swiss Federal Council;
 - (f) be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic agents;
 - (g) have the right to import free of duty their furniture and effects on the occasion of first taking up their post in Switzerland.

SECTION 16. In addition to the immunities and privileges specified in Section 15, the Secretary-General and all Assistant Secretaries-General and, if the Secretary-General should so desire, the chief administrative officer of the United Nations in Switzerland, shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys in accordance with international law.

SECTION 17. Privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Council shall have the right to waive immunity.

SECTION 18. The United Nations shall co-operate at all times with the appropriate Swiss authorities to facilitate the proper administration of justice, secure the observance of police regulations, and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.

ARTICLE VI. — *Experts on Missions for the United Nations*

SECTION 19. Experts (other than officials coming within the scope of Article V) performing missions for the United Nations shall be

accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular, they shall be accorded:

- (a) immunity from personal arrest or detention and from seizure of their personal baggage;
- (b) in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;
- (c) inviolability for all papers and documents;
- (d) for the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;
- (e) the same facilities in respect of currency or exchange regulations as are accorded to representatives of foreign governments on temporary official missions;
- (f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic agents.

SECTION 20. Privileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations.

ARTICLE VII. — *United Nations Laissez-Passer*

SECTION 21. The United Nations may issue United Nations laissez-passers to its officials. These laissez-passers shall be recognized and accepted as valid travel documents by the Swiss authorities taking into account the provisions of Section 22.

SECTION 22. Applications for visas (where required) from the holders of United Nations laissez-passers, when accompanied by a certificate that they are travelling on the business of the United Nations, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

SECTION 23. Similar facilities to those specified in Section 22 shall be accorded to experts and other persons who, though not holders of United Nations laissez-passers, have a certificate that they are travelling on the business of the United Nations.

SECTION 24. The Secretary-General, Assistant Secretaries-General, Directors and, if the Secretary-General should so desire, the chief administrative officer of the United Nations in Switzerland, travelling on United Nations laissez-passer on the business of the United Nations shall be granted the same facilities as are accorded to diplomatic envoys.

SECTION 25. The provisions of this Article may be applied to the comparable officials of specialized agencies if the agreements for relationship made under Article 63 of the Charter so provide.

ARTICLE VIII. — *Settlement of Disputes*

SECTION 26. The United Nations shall make provision for appropriate modes of settlement of:

- (a) disputes arising out of contracts or other disputes of a private law character, to which the United Nations is a party;
- (b) disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General.

SECTION 27. Any dispute between the United Nations and the Swiss Federal Council concerning the interpretation or application of this Interim Arrangement or of any supplementary arrangement or agreement which is not settled by negotiation shall be submitted for decision to a board of three arbitrators of whom the first shall be appointed by the Swiss Federal Council, the second by the Secretary-General of the United Nations, and a presiding arbitrator by the President of the International Court of Justice, unless in any specific case the parties agree to resort to a different mode of settlement.

FINAL ARTICLE

SECTION 28. This Interim Arrangement shall enter into force immediately upon its signature on behalf of the Swiss Federal Council and by the Secretary-General of the United Nations or on his behalf.

SECTION 29. The provisions of this Interim Arrangement can be modified only by agreement between the Secretary-General and the Swiss Federal Council. If agreement cannot be reached, the Secretary-General or the Swiss Federal Council may denounce the whole, or any section, of this Arrangement. In this case, unless the Secretary-General and the Swiss Federal Council otherwise agree, the Arrangement or the sections in question shall remain in force for three months from the date of such denunciation.

Annex to the Arrangement

1. The Secretary-General of the United Nations will communicate to the Swiss Federal Council a list of officials of Swiss nationality liable for service of a military nature.

2. The Secretary-General of the United Nations and the Swiss Federal Council will draw up by agreement a limited list of officials of Swiss nationality who will be granted dispensation in view of the office which they hold.

3. If other officials of Swiss nationality are called up, the Secretariat of the United Nations, through the Federal Political Department, may ask for postponement or some other appropriate measure.

B. EXTRACT FROM THE REPORT OF THE UNITED NATIONS NEGOTIATING COMMITTEE

4. The provisions of the *Interim Arrangement* follow closely those of the United Nations General Convention on Privileges and Immunities adopted by the First General Assembly and now open to accession by the Member States. As compared with the "modus vivendi" agreed in 1926 between the League of Nations and the Swiss Government, the Interim Arrangement deals with a number of important matters such as currency regulations, immunities of Representatives of Members or experts on missions for the United Nations, and the United Nations *laissez-passer* — subjects which are not covered by the "modus vivendi." On the other hand, the "modus vivendi" accords better treatment to League of Nations officials than the General Convention to United Nations officials. The Committee, however, felt that uniformity should as far as possible be secured in the immunities granted to the United Nations in the various countries, and confined itself largely to such modifications in the Interim Arrangement, as compared with the General Convention, as were necessary in view of the fact that the Interim Arrangement is a bilateral agreement with a non-Member State.

5. The main differences between the Interim Arrangement and the United Nations General Convention are as follows:

(a) In view of the fact that Switzerland is not a Member of the United Nations, the Committee felt that the question of the juridical personality of the United Nations should be dealt with in the Interim Arrangement on a different basis from that outlined in Sections 1 and 2 of the General Convention.

(b) Under Section 5 (a) of the General Convention, the United Nations, its assets, income and other property are exempt from all

direct taxes, while under the Interim Arrangement the exemption extends to all direct and indirect taxes, whether federal, cantonal or communal. Sub-section (b) of this Section provides for a special exemption from the Swiss "droit de timbre" on coupons and the "impôt anticipé." To sub-section (d), dealing with the exemption from all prohibitions and restrictions on imports and exports, was added, at the request of the Swiss delegation, the provision that the exemption is granted "on the understanding that the United Nations will use its good offices to obtain, if necessary, the consent of any other State which may be concerned, and subject to the provisions of general international conventions and public health measures."

(c) Also at the request of the Swiss delegation, there is added to Section 15 (c) concerning the immunity of United Nations officials from national service obligations, the reservation that officials of Swiss nationality are subject to certain special provisions contained in the Annex to the Interim Arrangement.

(d) Sections 16 and 24, dealing with immunities and privileges of the highest United Nations officials, provide that, if the Secretary-General should so desire, the chief administrative officer of the United Nations in Switzerland should be accorded similar immunities and privileges.

(e) Section 27, dealing with disputes concerning the interpretation or application of the Interim Arrangement, is based not on the General Convention but on Section 39 of the Draft Convention between the United Nations and the United States of America adopted by the first General Assembly. It provides for a Board of three arbitrators, of which the presiding arbitrator is to be appointed by the President of the International Court of Justice.

6. As mentioned in paragraph 3 *supra*, certain declarations are included in the records of the negotiations between the Committee and the Swiss delegation. At the first meeting, it was stated on behalf of the United Nations Committee that it was not desired to modify the Draft of the Interim Arrangement, but that the Committee wished to emphasize that it would certainly not refuse, and in fact would welcome, any facilities and privileges which the Swiss authorities, in accordance with their general practice, would grant to United Nations officials. In reply, the Swiss delegation stated that the Geneva authorities were prepared to accord to the United Nations, to the Representatives of its Members, and to its officials, the same treatment as that accorded previously to other international institutions.

In reply to a question put by the Swiss delegation referring to the

exemption of United Nations assets from taxes on real property under Section 5 (a), the Committee stated that the United Nations had no intention at present of purchasing real property in Geneva for purposes of investment only. The United Nations, however, must insist that real property which it might acquire should be exempt from taxation.

The Swiss delegation declared that Switzerland, in accordance with international law, would incur no international responsibility for the activities which the Interim Arrangement facilitated. Further, as regards the possible conclusion of new agreements in the future, the Swiss Government wished to reserve the right to re-open the examination of problems which might concern the safeguarding of the interests of Switzerland. The Swiss delegation noted that, in accordance with the explanations offered by the United Nations Committee, the United Nations *laissez-passer* would have to be considered as a new form of passport, the nature of which remained to be determined at a later date.

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